

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CARGILL, INC.,

Employer,

And

UNITED FOOD AND COMMERCIAL
WORKERS UNION LOCAL NO. 324

Petitioner.

Case No. 21-RC-136849

**EMPLOYER’S BRIEF IN SUPPORT OF EXCEPTIONS TO THE HEARING
OFFICER’S REPORT ON CHALLENGED BALLOTS AND OBJECTIONS**

Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board (“the Board”), Cargill, Inc. (“the Employer” or “Cargill”) submits this brief in support of its Exceptions to the Hearing Officer’s Report (“Hearing Officer’s Report”) issued on March 25, 2015, by Hearing Officer Kristyn Myers, Region 27 (“Hearing Officer”). Ex.1. For the reasons discussed below, and in addition to the reasons already advanced by Cargill in support of sustaining Objection No. 1,¹ Objection No. 5 should be sustained, the election results should be set aside, and a new election should be conducted.

I. BACKGROUND AND BASIC OVERVIEW

On December 4, 2014, Regional personnel conducted a secret ballot election in the above-captioned matter. The tally of ballots revealed 14 votes cast for the Union, 14 votes cast for no representation and one void ballot. There were 3 challenged ballots. *See* Ex. 3 Tr. 29.²

¹ On February 25, 2015 the Regional Director issued a Supplemental Decision and Order Directing Hearing and Notice of Hearing. Ex. 2. Objection No. 1 was overruled without a hearing. Cargill filed a timely request to review the decision to overrule Objection No. 1.

² Exhibit 3 is the transcript of the hearing. It will be referred to as Tr. and the relevant page numbers.

The Employer timely filed five Objections to the conduct of and conduct affecting the results of the election. Ex. 4. On February 25, 2015 the Regional Director ordered a hearing on four of these Objections as well as the challenged ballots. Ex. 2. The hearing was held and completed on March 5, 2015. Ex. 3. The Hearing Officer's Report was issued on March 25, 2015. Ex. 1. The Hearing officer recommended that all of the remaining Objections be overruled and that all of the challenged ballots be counted. *Id.* These exceptions to the Hearing Officer's recommendation to overrule Objection No. 5 follow.

II. EMPLOYER'S OBJECTION NO. 5 TO THE CONDUCT OF THE ELECTION AND TO CONDUCT AFFECTING THE RESULTS OF THE ELECTION SHOULD BE SUSTAINED

Employer's Objection No. 5 states that "Union supporters engaged in a loud demonstration just outside the polling room while waiting in line to vote and while the polls were open and no effort was made by Board agents conducting the election to investigate or end this disruptive and illegal conduct." *See* Ex. 1 at 24. The Hearing Officer's Report concluded correctly that it is undisputed that: voters waiting in line just outside the polling room where the votes were being cast were loud enough that they could be heard in that polling room through a wall and a closed door; that this conduct occurred while 10 to 15 of the 31 voters who cast ballots in the election were in line; that the polls were open while this conduct occurred; that Cargill's Observer asked the Board agents conducting the election to investigate the disturbance; and the Board agents conducting the election did nothing to investigate much less end the disruptive behavior. Ex. 1 at 27-28 and 33 n.14

In a crucial fact not recognized in the Hearing Officer's Report, it is also undisputed that this loud disturbance in the line waiting to vote while the polls were open included the use of unrepeatable profanities. Tr. at 137-38, 152. Further, one Union witness was not even asked

what he heard or saw while in line waiting to vote, bolstering the conclusion that the Union could not refute the highly offensive and disruptive nature of its supporters' outbursts. Tr. 162-67.

In the wake of these undisputed facts and the other evidence in the record, the Hearing Officer found it unnecessary to make any credibility determinations. Instead, the Report concluded that no objectionable conduct existed even if all credibility resolutions were resolved favorably to Cargill. *See e.g.* Ex. 1 at 33 n. 14. According to the Report, objectionable conduct does not exist where pro union voters in line waiting to vote while the polls were opened engage in loud and boisterous profanity laced yelling, chanting, pro union chants of "yes we can," and booing a known pro company voter as he left the polling area while others were in line waiting to vote. Ex. 1 at 31-32. The Report states that there was no objectionable conduct even though all of this occurred while the polls were open and while a third to a half of eligible voters were subject to this offensive disturbance while in line waiting to vote. All of this occurred in an election that resulted in a tie after 31 votes were counted with 1 void ballot and 3 challenged ballots pending. Further, all of this occurred during and after the Board agents running the election failed to investigate the disturbance after being asked to do so by Cargill's observer. There are several flaws with these conclusions.

First, the Hearing Officer seemed to conclude that the conduct was not severe because it only lasted for a few minutes and occurred in the hallway outside of where the voting took place. Ex. 1 at 31. It is well established that regardless of whether the conduct occurred outside the door to the voting place or in the polling place directly, disruptive conduct at or near polling places is sufficient grounds to overturn an election. *E.g. NLRB v. McCarthy Farms*, 24 F. 3d 725 (5th Cir. 1994)(court refuses to enforce Board order certifying election and required hearing on objections where pro union employee in the voting line cursed and threatened another employee with a vote no sticker); *see also Westwood Horizons Hotel*, 270 NLRB 802 (1984)(employee

union supporter threats before the election and misconduct in the voting line witnessed by 15 employees waiting to vote warrants setting aside the election); *Pepsi-Cola Bottling Co.*, 291 NLRB 378 (1988)(line of 15 to 20 pro union employees standing outside cafeteria where voting was to take place formed an illegal “gauntlet” that required setting aside the results of the election).

Additionally, the Report misses the point when it observes that the intimidating conduct was “isolated or brief in nature.” Ex. 1 at 32. It only lasted this long because that it is how long it took the pro union employees engaging in their disruptive misconduct and the targets of their intimidation to vote. More important than the length of the demonstration is the fact that up to half or more of the voters were exposed to the Union supporters’ threatening conduct during an election in a small unit where the tally resulted in a tie before 3 determinative votes are counted. In these circumstances, it is clear that the conduct of the Union supporters had much more than a “tendency to interfere with employees’ freedom of choice.” *Cambridge Tool Pearson Education, Inc.*, 316 NLRB 716 (1995); *Pepsi*, 291 NLRB at 578-79.

Second, the Hearing Officer seemed to place great emphasis on the observation that there was no physical violence alleged in the instant matter. See Ex. 1 at 32-33, discussing *Hollingsworth Management Service*, 342 NLRB 556 (2004) and *Westwood Horizons*, 270 NLRB 802 (1984). Of course, there is no such requirement. E.g. *Pepsi*, 291 NLRB at 578-79 (election results set aside in the absence of allegations of violence). Instead, where employee misconduct is alleged, the Board evaluates whether “the conduct at issue so substantially impaired the employee’s exercise of free choice as to require that the election be set aside.” *Rheem Mfg. Co.*, 309 NLRB 459 (1992). In the instant matter, the Report concedes if it does not explicitly conclude (as it should on this record) that several pro union employees engaged in a profane, intimidating demonstration that targeted almost half or more of the voting unit waiting in line to

vote in an election that ended in a tie before challenged ballots are counted. Ex. 1 at 27-28. This is exactly the type of serious conduct that substantially impairs free choice and warrants setting aside the election. *E.g. McCarthy Farms, supra; Pepsi, supra.*

In this regard, the instant matter is not comparable to *Rheem, supra* or *Southeastern Mills*, 227 NLRB 57, 58 (1976) as suggested by the Report. *See* Ex. 1 at 29-30 and 31-32. These cases involved individual acts of electioneering near or away from the polls. *See e.g. Rheem*, 309 NLRB at 462-63. There was no evidence of profanity, pro union chants, or booing of company supporters while leaving the polling place as others waited in line. Further, there was no evidence that any Board agent was asked to investigate and stop the conduct at issue and failed to do both. The instant matter is much more like *Pepsi-Cola Bottling Co.*, 291 NLRB 378 (1988) discussed by the Board in *Rheem*. The Board had no trouble confirming that forming a gauntlet of 15 to 20 electioneering union supporters at and near the voting line for the first 15 to 20 minutes of the election was indeed objectionable conduct. *Rheem*, 309 NLRB at 463. The Board found that the one vote margin in the election underscored the conclusion in *Pepsi, supra*. *Id.* The similarities between the misconduct in this matter and *Pepsi* are as striking as the differences between this matter and *Rheem*.

Third, and perhaps most importantly, the Report virtually ignores the impact of the Board agents' failure to grant Cargill's Observer's request to investigate the boisterous misconduct going on in the voting line. Indeed, this key issue is relegated to footnote wherein it is concluded that "As I find that even crediting the employer's witnesses, that the conduct of the voters waiting in line was not objectionable, it logically follows that the Board agents did not engage in objectionable conduct by failing to investigate or end the conduct". Ex. 1 at 33 n.14. This conclusion does not follow, it again misses the point, and is inconsistent with applicable law.

It is the Board's well-established practice to hold its agents to the highest standards of accuracy and neutrality when conducting elections and to set aside elections in which its agents do not meet these standards. *E.g. The Developing Labor Law*, (Sixth Ed. 2012)(Higgins, J. Editor in Chief) Vol. I, Ch. 9.II.A.3.d 536 *citing Athbro Precision Eng'g Corp.*, 166 NLRB 1699 (1967). This standard was not met in this case.

Had the Board agent investigated the cause of the disturbance as requested by Cargill's observer, the outbursts might have lasted far less than the 15 minutes or so that they did. The profanity, regardless of its cause (*see infra* note 3), might have ceased immediately if it started all. Similarly, the chanting and the booing also might never have happened or ended in short order.

Instead, the voters walked into the voting room and saw two Board agents who did nothing about the gauntlet of intimidating pro union conduct they experienced while waiting to vote. The only conclusion they could reach was that this type of union bullying was tolerated if not condoned by the federal government and the law these federal government agents were charged with enforcing. Any voter looking for protection from further Union intimidation if they voted against representation could have reached no other conclusion but that it was not available from the National Labor Relations Board or under the National Labor Relations Act. These circumstances fall far short of meeting the highest standards of neutrality the parties should expect from Board election procedures. To the contrary, they establish that the "conduct at issue so substantially impaired the employee's exercise of free choice as to require that the election be set aside." *Rheem Mfg. Co.*, 309 NLRB 459 (1992); *see also Pepsi, supra*.

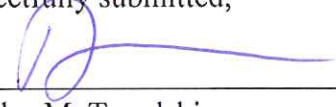
Had the Board agents acted as required, they would have immediately investigated the disturbance outside the polling area. If this investigation had taken place, Board agents would have been able to nip any misconduct in the bud and minimize or eliminate the intimidation of

voters that took place while the polls were open. Thus, and again, the point is not how bad the misconduct might have been based upon the credibility of the witnesses (because it is undisputed that it took place)³, but that the misconduct took place at all over the objections of Cargill's Observer and in the absence of any effort by the Board agents conducting the election to investigate what was happening or put an end to it. For these reasons as well, Objection No. 5 should be sustained, the election results should be set aside, and a new election should be conducted.

III. CONCLUSION

For the reasons set forth above, Employer's Objection No. 5 to the election should be sustained, the results of the election held on December 4, 2014 should be set aside and a new election should be ordered.

Respectfully submitted,



Douglas M. Topolski
Daniel A. Adlong, Esq.
**Ogletree, Deakins, Nash, Smoak
& Stewart, P.C.**
1909 K Street, N.W., Suite 1000
Washington, DC 20006
(202) 263-0242
Attorneys for Respondent, Cargill, Inc.

³ For example, Union witness Ennulat made the offensive and completely unbelievable assertion that the unrepeatable profanity related to the looks of a Board Agent. Tr. at 157-58. He also alleged that it was hard to hear because of machine noise coming from over 500 feet away. At the same time, other testimony established that machine noise was not loud in that area because no ear protection was required and they were not even running at the time because the operators were among those in line to vote. Tr. 180, 182. Clearly, Ennulat was trying to minimize the severity of the misconduct to preserve the victory for the side he supported. The Hearing Officer should have found him to be not credible and recognized the fact that the profanity was coming from pro union supporters and directed at those who they believed were not going to vote for the union.

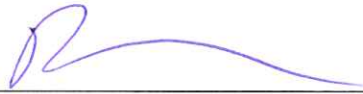
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 8, 2015 this Employer's Brief in Support of Exceptions to the Hearing Officer's Report on Challenged Ballots and Objections was filed electronically and that service copies were sent via e-mail to:

Robert A. Cantore, Esq.
Gilbert & Sackman
3699 Wilshire Blvd Suite 1200
Los Angeles, CA 90010
rac@gslaw.org

Olivia Garcia, Regional Director
National Labor Relations Board, Region 21
888 S. Figueroa Street, 9th Floor
Los Angeles, California 90017
olivia.garcia@nrlrb.gov

Kristyn A. Myers
National Labor Relations Board, Region 27
Byron Rodgers Federal Building
1961 Stout St., Suite 13-103
Denver, Colorado 80294
kristyn.myers@nrlrb.gov



Douglas Topolski

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Exhibit 1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

CARGILL, INC.

Employer

and

Case 21-RC-136849

UNITED FOOD & COMMERCIAL WORKERS
UNION LOCAL NO. 324

Petitioner

**HEARING OFFICER'S REPORT ON CHALLENGED BALLOTS &
OBJECTIONS**

On December 4, 2014¹, an agent of Region 21 conducted an election among certain employees of the Employer. The parties disagreed about whether certain individuals are eligible voters and these individuals voted utilizing the Board's challenged ballot procedure. The subsequent count of the ballots revealed that the challenged ballots are sufficient in number to affect the results of the election. Specifically, the ballots of Donna Teuscher (Teuscher), Josh Ennulat (Ennulat), and Leonardo Garcia (Garcia), were challenged on the grounds that they are office clerical employees, which are excluded from the collective-bargaining unit. Teuscher was challenged by the Petitioner and Ennulat and Garcia were challenged by the Employer.

In addition to the challenged ballots, the Employer contests the results of the election claiming that the Petitioner engaged in objectionable conduct, and therefore asks that the election be set aside and that a new election be held. In that regard, the Employer contends that the Petitioner threatened unit employees in order to cause them to drop their opposition to the

¹ Unless otherwise specified, all dates herein are 2014.

Petitioner; that the Petitioner instructed its election observer to solicit and encourage electioneering in the polling area; that pro-Petitioner employees engaged in electioneering in the polling area while the polls were open; and that pro-Petitioner employees engaged in a loud demonstration just outside the polling area while waiting in line to vote.

After conducting a hearing and carefully reviewing the evidence as well as the arguments made by the parties, I conclude that Teuscher, Ennulat, and Garcia are eligible to vote because they share a community of interest with the other unit employees eligible to vote. Therefore, I recommend that the challenge to their eligibility be overruled and that their ballots be opened and counted. Additionally, I recommend that the Employer's objections be overruled because the evidence is insufficient to show that the Petitioner or that pro-Petitioner employees engaged in objectionable conduct as alleged.

PROCEDURAL HISTORY

The Petitioner filed the election petition in this matter on September 16. The parties were unable to agree to the terms of an election, and, therefore, on October 29 the Region issued a Decision and Direction of Election. The election was held on December 4. The employees in the following unit voted on whether they wished to be represented by the Petitioner:

INCLUDED: All full-time and regular part-time packaging, shipping, and receiving employees employed by the Employer at its facility located at 566 North Gilbert Street, Fullerton, California.

EXCLUDED: All other employees, maintenance employees, terminal employees, quality-control employees, staffing-agency employees, office clerical employees, guards and supervisors as defined by the Act.

The ballots were counted and a tally of ballots was provided to the parties. The tally of ballots shows that 14 ballots were cast for the Petitioner, and that 14 ballots were cast against

representation. According to the tally, there are also three challenged ballots, a sufficient number to affect the outcome of the election.

Thereafter, objections to the conduct of the election were timely filed. On February 25, 2015, the Regional Director for Region 21 issued a Supplemental Decision and Order Directing Hearing and Notice of Hearing (Decision and Order), in which she ordered that a hearing be conducted to give the parties an opportunity to present evidence regarding the challenged ballots and the objections. As the hearing officer designated to conduct the hearing and to recommend to the Board whether to overrule or sustain the challenged ballots and to recommend to the Board whether the Employer's objections are warranted, I heard testimony and received into evidence relevant documents on March 5, 2015. The parties were permitted to file briefs and both the Employer and the Petitioner timely filed briefs. I have fully considered the Briefs and the arguments and Board law contained therein.

The Decision and Order directing the hearing in this matter instructs me to resolve the credibility of witnesses testifying at the hearing and to make findings of fact. Unless otherwise specified, my summary of the record evidence is a composite of the testimony of all witnesses, including in particular testimony by witnesses that is consistent with one another, with documentary evidence, or with undisputed evidence, as well as testimony that is uncontested. Omitted testimony or evidence is either irrelevant or cumulative. Credibility resolutions are based on my observations of the testimony and demeanor of witnesses and are more fully discussed within the context of my discussion of the challenged ballots related to the witnesses' testimony and the context of the objection related to the witnesses' testimony.

THE EMPLOYER'S OPERATION

The Employer is a Delaware corporation with a facility located in Fullerton, California, at which it processes food-grade oil. The facility is divided into two sections – the terminal area and the packaging building. For the most part, the employees working in the terminal area are excluded from the voting unit. The packaging, shipping, and receiving employees are included in the unit and primarily work in the packaging building.

Food-grade bulk oil is delivered to the terminal area in bulk trucks or railcars. The majority of the oil is stored in the terminal and gets shipped out in bulk-tanker trucks. The remaining oil is processed into different types of cooking oil in blending tanks located in the terminal. The oil that isn't shipped out in bulk goes to the packing department where it goes to one of four lines and is packed into different sized bottles, cubes or boxes by the machine operators, who are included in the unit. The put-away employees use a forklift to move the packaged oil into the warehouse, where the packaged oil is stored until being shipped. The put-away department employees are also included in the bargaining unit. The receiving employees, who are included in the unit, work in this area as well and are primarily responsible for unloading incoming raw material with a forklift and storing it in the warehouse area. Finally, the shipping department is responsible for ensuring that the packaged oil stored in the warehouse gets loaded onto third-party trucks and is shipped to the customers. The majority of the shipping employees are referred to as "loaders" and their primary duty is to take the packaged oil from the warehouse and load the product onto third-party trucks using a forklift. The loaders are included in the unit. Stephanie Puig-Mier supervises all of the packaging and shipping employees. The shipping employees work the first shift. They generally work 8-hour shifts between the hours of 5:00 a.m. and 5:00 p.m.

THE CHALLENGED BALLOTS

The ballots of Teuscher, Ennulat, and Garcia were challenged on the grounds that they are office clerical employees, which are excluded from the collective-bargaining unit. Teuscher was challenged by the Petitioner and Ennulat and Garcia were challenged by the Employer. Teuscher, Ennulat, and Garcia are part of the shipping department. All three of these individuals were listed on the *Excelsior* list on the day of the election. Teuscher, Ennulat, and Garcia are supervised by Puig-Mier. Teuscher, Ennulat, and Garcia share the same benefits and have the same dress code as the packaging and shipping employees included in the unit. The production employees and shipping employees use the same computer system (WM6) to perform their jobs.

Legal Standard

In *Caesar's Tahoe*, 337 NLRB 1096, 1098 (2002), the Board reiterated that the distinction between “plant clericals” and “office clericals” is “rooted in community-of-interest concepts ... albeit it is occasionally difficult to discern.” (citing *Cook Composites & Polymers Co.*, 313 NLRB 1105, 1108 (1994)). The Board framed the test for plant clerical as “whether the employees’ principal functions and duties relate to the production process, as distinguished from general office functions.” *Id.* Finally, the fact that employees exercise some clerical skills is not an obstacle to finding them plant clericals where “other factors link them to the production process and other production employees.” *Id.* at 1099. However, clericals whose principal duties relate to the general office operation and are performed within the general office are generally office clericals. *Cook Composites & Polymers Co.*, 313 NLRB at 1108. Among the factors the Board considers in assessing community of interest are integration of operations, centralized control of management and labor relations, geographic proximity, similarity of terms

and conditions of employment, similarity of skills and functions, physical contact among employees, collective-bargaining history, the degree of employee interchange, and the degree of separate daily supervision. *E. I. Du Pont*, 341 NLRB 607, 608 (2004); *Compact Video Services*, 284 NLRB 117, 119 (1987).

Donna Teuscher

Record Evidence

Petitioner challenged the ballot of Teuscher on the basis that she is an office clerical employee and excluded from the unit. Teuscher's job title is transportation coordinator. She acts as a "travel agent" for the oil that is packaged in the packaging building.² Essentially, Teuscher's duties encompass scheduling the dock appointments with the third-party trucking carriers; ensuring that the trucks arrive at the Employer's facility on schedule and depart on schedule; and coordinating with the loaders, who are included in the unit, to ensure that the trucks are loaded at the appropriate times and at the appropriate docks. Her desk is in shipping office, which is located in the packaging building. Teuscher generally works from 7:00 a.m. to 3:00 p.m. She shares an office with the shipping clerk,³ shipping lead Ray Ramirez (Ramirez), and Josh Ennulat. Teuscher spends about 95 percent of her time working in the shipping office.

A considerable portion of Teuscher's day is spent communicating with the third-party carriers to schedule the dock times for the trucks and to resolve issues with the load or trucks. She is also responsible for ensuring that the trucks arrive and leave the Employer's facility at the appropriate times. To facilitate this goal, Teuscher has daily contact with the loaders to convey the delivery times for the trucks so that the product arrives at the customer's facility on time.

² The transportation for the bulk oil that goes into and out of the terminal side of the facility is primarily handled through the Employer's Gainesville office, which is not part of the petitioned for unit.

³ At the time of the election the shipping clerk position was filled by a temporary employee, who is not in the bargaining unit.

Most of her contact with the loaders in this regard is face-to-face and takes place in the shipping office.

Teuscher also helps check in the third-party carrier trucks.⁴ The record as a whole reveals that all of the employees who sit in the shipping office take turns checking in the trucks. The truck drivers are checked in at the shipping office window. Teuscher elicits the relevant information from the driver – Department of Transportation (DOT) number, trailer license plate number, and load they're picking up. She then enters the information into a load/inspection sheet through a computer system. The inspection/load sheet contains the information necessary for the loaders to determine what truck to load and what product they will be picking and loading onto the truck. Teuscher then prints the inspection/load sheet and posts it on a board in the shipping office. The loaders come into the shipping office and pick up the inspection/load sheet. The loaders then load the trucks based off of the information contained in the inspection/load sheet.

Teuscher also has contact with loaders to discuss various complications that arise with an order or a load. For example, she testified that multiple times on a daily basis she contacts the loaders to inform them that there is a change to an order. She most commonly uses the Employer's PA system to contact the loaders and they either call her or come to the shipping office to discuss the issues. Similarly, if a truck is not suitable to transport the food-grade oil the loaders will come to her to inform her that they have rejected a truck. Teuscher would then contact the carrier to resolve the issue with the truck. However, there are some problems loaders

⁴ I credit Teuscher's testimony that she checks in trucks as she is the most competent to testify about what her job duties are. Moreover, Teuscher is the only witness that described the check-in process in detail, which belies, Ennulat's testimony that Teuscher does not know how to check in trucks. Accordingly, I discredit Ennulat's testimony that Teuscher does not know how to check in trucks.

may have that Teuscher is not qualified to resolve such as reservation codes and IDOT⁵ failures. These types of issues are resolved by the shipping clerk, Ennulat, or the shipping lead Ramirez.

Teuscher is not fork lift certified and never loads the trucks. She has steel-toed boots to wear if she needs to go into the warehouse area but rarely needs to go into the warehouse to perform her job.

Analysis

As the party that challenged Teuscher's ballot, the Petitioner bears the burden of showing that she is ineligible to vote as an office clerical employee. See *Kroger Co.*, 342 NLRB 202, 204 (2004) ("the party seeking to exclude an employee from the bargaining unit and participation in a Board election bears the burden of establishing ineligibility."). The Petitioner contends that Teuscher is an office clerical employee and, therefore ineligible to vote. In making this argument, the Petitioner primarily relies on evidence that Teuscher spends about 95 percent of her time in the shipping office as opposed to the warehouse floor and that her work is related to getting the third-party carrier trucks to the shipping dock as opposed to getting the product to the shipping dock. As explained below, I find that the Petitioner has failed to satisfy its burden that Teuscher is ineligible to vote.

The Petitioner primarily contends that Teuscher's functions of scheduling docking appointments with third-party carriers does not sufficiently relate to the Employer's shipping process. I find that the Petitioner failed to prove that Teuscher's primary function of communicating with third-party carriers to schedule dock times is not integral to the Employer's shipping process. To the contrary, it is axiomatic that scheduling docking times with third-party carriers and ensuring that the trucks arrive and leave on schedule is fundamental to the Employer's goal of timely shipping its product to its customers. See *Kalustyans*, 332 NLRB

⁵ The record is unclear about what an IDOT failure is or how often something like that happens.

843, 843-844 (2000) (finding that employees whose duties include making arrangements with carriers for shipping are not office clericals and are appropriately included in the unit as shipping clerks); see also *Kroger Co.*, 342 NLRB at 204 (concluding that an employee's duty of answering the phone is integral to the production process where the content of the phone calls relate to the production process).

Contrary to the Employer's argument, the record indeed reflects that some of Teuscher's duties directly relate to getting the packaged product to the third-party trucks waiting in the dock. Primarily, Teuscher is responsible for coordinating with the loaders to ensure that they load the appropriate trucks at the appropriate times and docks. Additionally, Teuscher creates the inspection/load sheets, which contain the information needed by the loaders to load the correct product onto the appropriate truck. She then prints these inspection/load sheets and posts them on the white board for the loaders to take. The creation and distribution of the inspection/load sheets is inextricably related to shipping the Employer's product. See *John N. Hansen Co.*, 293 NLRB 63, 64-65 (1989) (finding that an employee who creates picking tickets, which apprise the warehouse employees of the specific merchandise to be packaged and shipped is work integral to the functions of the employer's warehouse operations). Teuscher also has daily face-to-face interaction with the loaders to convey delivery times and to resolve issues with trucks or loads. Teuscher's contact with the loaders is fundamental to the process of loading the trucks with the appropriate product in a timely fashion.

As a matter of law the facts that Teuscher works in the shipping office and uses a computer rather than a forklift to do her job do not preclude her inclusion in this unit. See *John N. Hansen Co.*, 293 NLRB at 65; *Avon Products*, 250 NLRB 1479, 1486 (1980). As described above, Teuscher's computer work is directly related to the Employer's shipping operation.

Moreover, it is significant that Teuscher shares the shipping office with the shipping clerk (an employee from a temporary agency), shipping lead Ramirez who was eligible to vote in the election, and Ennulat whose eligibility is contested by the Employer. The record reveals that all of these individuals perform work that relates to the Employer's shipping process. Employees who perform more traditional office clerical work for the Employer, such as accounting and accounts receivable and payable sit in a separate administrative office.

I further conclude that Teuscher shares a community of interest with the shipping employees based on her integral participation in the shipping process, the close proximity of her work area to the warehouse and packaging lines, the daily contact she has with the other shipping employees (the loaders), and the common supervision and similar fringe benefits she shares with the other shipping employees. Thus, I find that Teuscher's job duties are sufficiently linked to the shipping operation to be appropriately included in the unit.

Josh Ennulat

Record Evidence

The Employer challenged the ballot of Josh Ennulat on the basis that he is an office clerical employee and excluded from the unit. Ennulat's job duties are similar to those of Teuscher as described above. In that regard, Ennulat is the "travel agent" for one of the Employer's customers -- California Oils Corporation (CalOils). CalOils is a customer that requires special attention to quality and shipment. The CalOils product is stored in the Employer's Fullerton warehouse, then shipped to a third-party warehouse (the Biagi warehouse), and from there shipped to the customer. Ennulat is responsible for coordinating CalOils shipments from the Employer's Fullerton facility to the Biagi warehouse.

Ennulat does not know his exact job title but testified that he is classified as “production labor” on his paycheck.⁶ Ennulat’s desk is in the shipping office. He starts his work day at 5:00 a.m. and works 40 hours per week. The two weeks prior to the hearing in this matter, Ennulat spent about 85 percent of his time working at his desk. Prior to that he estimated he spent about 60 percent of his time at his desk.

Similar to Teuscher, Ennulat contacts third-party carriers to coordinate the docking times for trucks that will be transporting CalOils product. Additionally, he coordinates the shipments of CalOils product to the Biagi warehouse. He also coordinates with personnel at Biagi warehouse to ensure that they have the dock loading times for the shipments from the Employer’s facility. Ennulat initiates the first step of the CalOils shipping process by entering orders into the computer system. Ennulat is also responsible for creating the inspection/load sheets for the CalOils trucks. It is undisputed that Ennulat is fork lift certified and that he loads some of the CalOils product onto trucks using a forklift. Ennulat testified that he loads the CalOils for the following two reasons: (1) the loaders do not want to load the CalOils; and (2) to ensure that the CalOils product is loaded properly. Ennulat spends about three to five hours per week using a forklift to load CalOils product. Although Meade testified that in November 2104 he told Teuscher that the loaders are supposed to load the CalOils and not Ennulat, it is undisputed that Meade never conveyed this information to Ennulat.

Ennulat also checks in trucks, which he does primarily in the early the morning before the shipping clerk arrives. He also assists Garcia with inventory when needed and goes out to the warehouse floor to check on orders or production. Ennulat has contact with the loaders on a daily basis. He communicates with loaders as part of the truck check-in process and

⁶ Lead Operations Supervisor Meade testified that Ennulat’s job title is “CalOils Coordinator.” However, he did not dispute that Ennulat’s paycheck shows that his job title is “production labor.”

communicates with loaders to resolve problems with orders. Finally, on occasion Meade assigns Ennulat loading work. For example, a few months ago Ennulat loaded pallets onto a truck so they could be shipped to the Biagi warehouse.

Analysis

As the party challenging Ennulat's ballot, the Employer bears the burden of showing that Ennulat is ineligible to vote as an office clerical employee. See *Kroger Co.*, 342 NLRB at 204. The Employer argues that Ennulat should be excluded from the voting unit because he uses a telephone and computer to coordinate the CalOils shipments from the Employer's facility to the Biagi Warehouse and because he is not required to load CalOils trucks. I find that the Employer has failed to satisfy its burden of proving that Ennulat should be excluded from the unit as an office clerical employee.

I find that Ennulat is appropriately included in the unit as a shipping employee for essentially the same reasons discussed above regarding Teuscher's inclusion in the unit. In that regard, the record as a whole indicates that Ennulat's job is vital to the Employer's shipping operation. Specifically, Ennulat is responsible for coordinating the shipment of CalOils product. In doing so, he schedules docking times with third party carriers; schedules the shipment of CalOils to the Biagi warehouse; initiates the shipping process by entering order numbers into the computer; checks in third-party carrier trucks; creates inspection/load sheets for CalOils; and spends three to five hours per week actually loading CalOils product onto the trucks. All of this work is integrally related to the Employer's shipping operation. See *Kalustyans*, 332 NLRB 843, 843-844 (2000) (finding that employees whose duties include making arrangements with carriers for shipping are not office clericals and are appropriately included in the unit as shipping clerks); *John N. Hansen Co.*, 293 NLRB 63, 64-65 (1989) (finding that an employee who

creates picking tickets, which appraise the warehouse employees of the specific merchandise to be packaged and shipped is work integral to the functions of the employer's warehouse operations).

Contrary to the Employer's argument the fact that Ennulat primarily sits at a desk and uses a computer to perform his job does not require his exclusion from the unit because Ennulat's computer work is inextricably linked to the Employer's shipping operation. See *Kroger Co.*, 342 NLRB at 204 (concluding that an employee's duty of answering the phone is integral to the production process where the content of the phone calls relate to the production process); *John N. Hansen Co.*, 293 NLRB at 65 (finding that the fact that an employee uses a computer and other traditional office equipment does not exclude her from the unit where her duties are integral to the functioning of the employer's warehouse). Finally, it is irrelevant that according to Mead, Ennulat is not required or expected to load trucks.⁷ The record reveals that Ennulat does in fact load trucks for three to five hours per week, which makes the case for including Ennulat in the unit even stronger than that of Teuscher.

Moreover, I conclude that Ennulat shares a community of interest with the shipping employees based on his integral participation in the shipping process, the close proximity of his work area to the warehouse and packaging lines, the daily contact he has with the loaders and shipping lead Ramirez, the fact that he loads trucks on a weekly basis, and the common supervision and similar fringe benefits he shares with the other shipping employees. Thus, I find that his job duties are sufficiently linked to the shipping office to be appropriately included in the unit.

⁷ Meade did not deny that Ennulat does in fact load CalOils.

Leonardo Garcia

Record Evidence

The Employer challenged the ballot of Leonardo Garcia on the basis that he is an office clerical employee and excluded from the unit. Leonardo Garcia's job title is inventory controller/product controller/shipping. He sits in the packaging office, which is located in the packaging building. Garcia generally begins work at about 5:00 a.m. or 5:30 a.m. and works 40 hours per week. However, his shifts vary depending on the needs of the facility. For example, once per month he starts work at midnight for the facility's end of the month process.

Garcia's primary responsibility is to insure that the inventory for the facility is accurate. Most of this work is done using one of the Employer's computer systems on which he closes out process orders and makes inventory adjustments. Garcia spends about 60 percent to 70 percent of his time working at his desk in the packaging office.⁸

Additionally, Garcia spends about 30 percent to 40 percent of his time on the warehouse floor checking on production and inventory. On a daily basis he goes into the warehouse area and picks up inventory forms completed and left for him by the put away forklift drivers. Garcia uses these forms to verify that a pallet was produced correctly. If there is something incorrect with the pallet he fixes it in the computer system. While on the warehouse floor, Garcia also talks to the forklift drivers to make sure that everything is okay and to inquire if they need assistance with anything. Garcia also assists the forklift drivers to resolve problems with incorrect pallets. For example, if the inventory on a pallet is incorrect he will go into the warehouse to look at the pallet and discuss the issue with the forklift driver. Garcia's job duties

⁸ Meade testified that Garcia spends 85 percent of his time working in the packaging office. I credit Garcia's testimony in this regard because he is in the best position to know how much time he spends working in his office as opposed to on the facility floor. Moreover, Meade testified that on a daily basis his job takes him all over the facility.

do not typically require him to use a forklift but he is forklift certified. And on occasion, supervisors will assign him fork lift work. For instance, about one-month prior to the hearing in this matter, Garcia offloaded a trailer using a forklift at his supervisor's request.

Analysis

The Employer challenged the ballot of Garcia on the basis that he is an office clerical employee and excluded from the unit. The Employer essentially argues that Garcia is an office clerical because he uses the Employer's computer system to track the inventory and spends most of his time working at a desk in an office. I find that the Employer has failed to satisfy its burden.

The Employer has failed to demonstrate that Garcia's use of the computer system to track inventory is not integral to the packaging and shipping process. Rather, the record demonstrates that Garcia's uses the computer system primarily to track inventory, which is crucial to the Employer's operation. In that regard, Garcia uses the same computer system that is used by the other unit employees in the packaging area including the machine operators and loaders. The close relationship between Garcia's inventory functions and the functions of the packaging and shipping operation is evident. Garcia has daily face-to-face contact with the unit forklift drivers, who are included in the unit. Indeed he spends 30 percent to 40 percent of his time interacting with the forklift drivers to resolve inventory issues and to verify that the pallets contain the correct product. He is also responsible for checking that the inventory in the computer reflects the true quantities on the warehouse floor. Thus, I find that Garcia is functionally integrated with the packaging and shipping employees. See *Caesars Tahoe*, 337 NLRB at 1100 (concluding that the engineering coordinator position is "functionally integrated" with the daily operations of the

maintenance engineers where the coordinator had daily contact with the engineers by virtue of his dispatching, timekeeping, and attendance at department meetings).

Finally, I conclude that Garcia shares a community of interest with the other unit employees based on his integral participation in the packaging and shipping process, the close proximity of his work area to the warehouse and packing lines, the daily and extended contact he has with the forklift drivers, and the common supervision and similar fringe benefits he shares with the other unit employees. Thus, I find that his job duties are sufficiently linked to the Employer's operations to be appropriately included in the unit.

Conclusions Regarding Challenged Ballots

Based on the foregoing, I recommend that the Petitioner's challenge to the ballot of Teuscher be overruled and that the Employer's challenge to the ballots of Ennulat and Garcia be overruled.

THE EMPLOYER'S OBJECTIONS⁹

Objections Alleging that the Petitioner Engaged in Objectionable Conduct

Objection 2

The [Petitioner] by its employees and agents, threatened voting unit employees with harassment and other consequences if they did not cease exercising their Section 7 right to oppose union representation. This illegal conduct took place between the date the petition was filed and the date the election was held.

Objection 4

[Petitioner] employees instructed the [Petitioner] observer to solicit and encourage electioneering in the polling area just before the polls opened on December 4.

⁹ In the Decision and Order the Regional Director for Region 21 did not direct a hearing on Objection 1.

The Burden of Proof and the Board's Standard for Setting Aside Elections Due to Conduct of a Party

It is well settled that “[r]epresentation elections are not lightly set aside. There is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees.” *Lockheed Martin Skunk Works*, 331 NLRB 852, 854 (2000), quoting *NLRB v. Hood Furniture Co.*, 941 F.2d 325, 328 (5th Cir. 1991) (internal citation omitted). Therefore, “the burden of proof on parties seeking to have a Board-supervised election set aside is a heavy one.” *Delta Brands, Inc.*, 344 NLRB 252, 253, (2005), citing *Kux Mfg. Co. v. NLRB*, 890 F.2d 804, 808 (6th Cir. 1989). To prevail, the objecting party must establish facts raising a “reasonable doubt as to the fairness and validity of the election.” *Patient Care of Pennsylvania*, 360 NLRB No. 76 (2014), citing *Polymers, Inc.*, 174 NLRB 282, 282 (1969), *enfd.* 414 F.2d 999 (2d Cir. 1969), *cert. denied* 396 U.S. 1010 (1970). Moreover, to meet its burden the objecting party must show that the conduct in question affected employees in the voting unit. *Avante at Boca Raton*, 323 NLRB 555, 560 (1997) (overruling employer’s objection where no evidence that unit employees knew of the alleged coercive incident).

In determining whether to set aside an election, the Board applies an objective test. The test is whether the conduct of a party has “the tendency to interfere with employees’ freedom of choice.” *Cambridge Tool Pearson Education, Inc.*, 316 NLRB 716 (1995). Thus, under the Board’s test the issue is not whether a party’s conduct in fact coerced employees, but whether the party’s misconduct reasonably tended to interfere with the employees’ free and uncoerced choice in the election. *Baja’s Place*, 268 NLRB 868 (1984). See also, *Pearson Education, Inc.*, 336

NLRB 979, 983 (2001), citing *Amalgamated Clothing Workers v. NLRB*, 441 F.2d 1027, 1031 (D.C. Cir. 1970).

Objection 2

Record Evidence

In Objection 2, the Petitioner alleges that Petitioner's Organizing Director Gilbert Davila (Davila)¹⁰ threatened voting unit employee Ramon Smith (Smith) to cause him to drop his opposition to Petitioner and/or to cease exercising his Section 7 right to speak out against Petitioner. The record establishes that sometime in November, during the critical period, the Employer held a meeting with unit employees about the upcoming representation election. During this meeting, the Employer showed videos about union strikes. Smith¹¹ attended this meeting and made comments about his prior experience with the United Food and Commercial Workers union when he worked at Albertsons. Smith said at the meeting that when he worked at Albertsons they went on strike and the union did not support the employees. He further explained at the meeting that the employees' pay got cut so low that he and others eventually had to go look for other jobs and it seemed like the union did not care because it was not paying the employees.

It is undisputed that the following Sunday, about November 23, Petitioner's Organizing Director Gilbert Davila made a home call to Smith's house. This was the second visit Davila made to Smith's house. Davila first visited Smith on about November 9 for the purposes of educating him about the Petitioner and to "inoculate" him about the Employer's campaign message. This first visit was part of the Petitioner's election campaign during which Davila and

¹⁰ It is undisputed that Davila is an agent of Petitioner.

¹¹ At the time of the election, Smith worked in the packaging department as a technician on one of the Employer's bottling lines.

other of the Petitioner's organizers made similar house calls to many of the voting unit employees. At the end of the first house call, Davila told Smith that he would see him in about two weeks, because the Employer was going to talk to employees about strikes.

During the November 23 house call, Smith and Davila talked for about 20 to 40 minutes. Smith testified that it was "a normal friendly conversation" and that they discussed food, what the Petitioner could do for him, and "other" topics. Smith testified that Davila tried to persuade him to vote yes. Smith explained that he didn't have a problem with the Employer and had no reason to vote yes. Davila then tried to persuade Smith not to vote at all. Smith does not recall what he told Davila about whether he was going to vote or how he was going to vote.

They also discussed the comments Smith made at the Employer's meeting earlier that week. Exactly what was said about this topic is in dispute. Smith testified that Davila told him that what Smith said at the Employer's meeting about the union was not true and that was not how things happened. Smith replied "that's what happened." Davila then asked Smith whether he said that he did not get his job back at the meeting. Smith replied "I didn't get my job back because I had to go look for another job because I couldn't afford to keep striking." Smith testified that Davila then said the following:

I know where your vote stands. So I probably won't show up at your house again unless something like this happens again.

Smith's testimony about the above-quoted statement was consistent on an extensive and somewhat aggressive cross examination. Smith testified on cross that Davila said "I won't come to your house unless something like this happens again." Smith testified that he understood that Davila was referring to "me speaking out against the [Petitioner]."

Davila's testimony differs from Smith's. Davila testified that he told Smith he heard what the Employer had said about the strikes and that he heard what Smith said about his

experience with strikes. Davila asked Smith what happened at the meeting and Smith told him.¹²

Davila then told Smith that Smith did not understand the difference between strikes and lockouts.

Davila testified that he then said:

[a]nd so I won't be back again, because the election's next week. And I hope that we continue to have your support. Hope you support your coworkers. And if you have any questions, please call me.

Davila denied saying anything like "I'll be back if..." Davila testified that after this conversation he counted Smith as a "no" vote.

When Smith returned to work he told three of his coworkers in his department about Davila's house call. Specifically, he told them that "it was weird" and that he thought someone "ratted" him out to the Petitioner because Davila "was at my house the following Sunday." He did not testify about whether he told employees about the specific content of the conversation he had with Davila. There is no other evidence relating to dissemination of Davila's alleged threat.

Board Law

As discussed above, in evaluating party conduct that takes place during the critical period, the Board applies an objective standard, under which conduct is found to be objectionable if "it has the tendency to interfere with employees' freedom of choice." See *Cedars-Sinai Medical Ctr.*, 342 NLRB 596, 597 (2004). In determining whether a party's conduct has the tendency to interfere with employee free choice, the Board considers a number of factors: (1) the number of incidents; (2) the severity of the incidents and whether they were likely to cause fear among employees in the voting unit; (3) the number of employees in the voting unit who were subjected to the misconduct; (4) the proximity of the misconduct to the date of the election; (5) the degree to which the misconduct persists in the minds of employees in the voting unit; (6) the extent of dissemination of the misconduct to employees who were not

¹² Davila did not testify about exactly what Smith told him Smith said at the meeting.

subjected to the misconduct but who are in the voting unit; (7) the effect (if any) of any misconduct by the non-objecting party to cancel out the effects of the misconduct alleged in the objection; (8) the closeness of the vote; and (9) the degree to which the misconduct can be attributed to the party against whom objections are filed. *Taylor Wharton Division*, 336 NLRB 157, 158 (2001), citing *Avis Rent-a-Car*, 280 NLRB 580, 581 (1986).

Analysis

Clearly, there is a credibility conflict. Smith testified that on November 23, after discussing the comments Smith made at the Employer's meeting, Davila told him "so I probably won't show up at your house again unless something like this happens again." In contrast, Davila testified that he said "[a]nd so I won't be back again, because the election's next week. And I hope that we continue to have your support." I credit Smith's testimony in this regard. During his testimony, Smith answered questions in a forthright manner and he readily admitted when he did not remember something. His testimony was also consistent on direct and on an extensive and rather antagonistic cross-examination. Finally, Davila's testimony contains two inherent inconsistencies. First, Davila testified that he told Smith he would not be back again because the election was the next week. However, the election took place on December 4, which is more than one week later. Second, Davila testified that he told Smith "I hope that we continue to have your support," which is inconsistent with his testimony that he counted Smith as a "no" vote. As explained below, even crediting Smith's testimony relating to this objection, Davila's statement does not warrant setting aside the election.

Essentially, the Employer contends that Davila threatened Smith at his home for exercising his Section 7 rights to speak out against the Petitioner by threatening Smith during a home visit that he would not return to his home "unless something like this happens again."

Applying the factors listed above, I find that Davila's statement does not rise to the level of objectionable conduct that would warrant setting aside the results of this election. First, this is the only objection alleging that the Petitioner coercively threatened voting unit employees. This factor is significant in light of the record evidence that the Petitioner made home visits to a large number of voting unit employees.

Second, I find that the comment is relatively minor and that Davila's statement that he would make another home visit if something like that happened again is not likely to cause fear among employees in the voting unit. Indeed, event Smith characterized the nature of Davila's home visit as "a normal friendly conversation." Moreover, Davila's statement does not rise to the level of type of threats that the Board typically finds objectionable – threats of job loss and physical violence. Cf. *Cedars-Sinai Medical Ctr.*, 342 NLRB at 598 (finding threats to physically harm employees' family and pets objectionable where the threats were linked to the employees' anti-union sentiments); *Baja's Place, Inc.*, 268 NLRB 868 (1984) (finding objectionable a union agent's threat "to get" employee's job); *United Broadcasting Company of New York, Inc.*, 248 NLRB 403 (1980) (concluding that threat to "blacklist" employee if he did not support union, grounds for setting aside election); *Westside Hospital*, 218 NLRB 96 (1975) (finding a union organizer's threat of deportation to Spanish-speaking employee objectionable).

Third, this is an isolated incident. Only Smith was subject to Davila's statement. The statement was made more than one week prior to the election and there is no record evidence indicating that Davila's statement was on the mind of voting unit employees on the day of the election. Finally, Davila's statement to Smith was not widely disseminated. Smith told only three eligible voters about Davila's visit and Smith did not testify about exactly what he told his co-workers that Davila said.

The only factor weighing in favor of finding the statement objectionable is the closeness of the election. While I recognize that the election results were extremely close, this one factor does not outweigh the other factors that all weigh against finding that Davila engaged in objectionable conduct. See *Consumers Energy Co.*, 337 NLRB 752, 752 and n.2 (2002) (the closeness of an election does not alter an objecting party's burden to prove that there has been misconduct that warrants setting aside the election). For all of the above reasons, I find that Davila's statement to Smith did not reasonably tend to interfere with the employees' free and uncoerced choice in the election.

Recommendation

I recommend that Objection 2 be overruled.

Objection 4

Facts

In Objection 4, the Employer alleges that Davila instructed the Petitioner's observer to encourage electioneering in the polling area. However, after reviewing the record, I find that the Employer failed to present any evidence in support of Objection 4. In that regard, the Decision and Order provides that in support of Objection 4, the Employer intended to present evidence at the hearing that during the preelection conference Davila called the Petitioner's Observer Israel Ramirez by name and gave the observer a thumbs-up sign, which constitutes evidence that the Petitioner had worked out a system of campaigning in the polling area while the polls were open. Despite the fact that both the Employer's observer Teuscher and the Petitioner's observer Ramirez testified, the Employer failed to elicit any testimony remotely related to Objection 4. In fact, the Employer failed to present any evidence pertaining to the preelection conference at all. Moreover, the Employer failed to elicit any testimony related to the specific allegation that

Davila gave Israel Ramirez a thumbs-up signal and failed to present any evidence pertaining to the allegation that Davila and Israel Ramirez had worked out a system of campaigning in the polling area. Accordingly, I recommend that Objection 4 be overruled.

Recommendation

I recommend that Objection 4 be overruled.

Objections Alleging that Third Parties Engaged in Objectionable Conduct

Objection 3

[Petitioner] supporters engaged in electioneering in the polling area.

Objection 5

[Pro-Petitioner] supporters engaged in a loud demonstration just outside the polling room while waiting in line to vote and while the polls were open and no effort was made by Board agents conducting the election to investigate or end this disruptive and illegal conduct.

The Burden of Proof and the Board's Standard for Setting Aside Elections Due to Third-Party Conduct

When there is no evidence that a party is involved in alleged misconduct the test to be applied is "whether the misconduct is so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible." (citations omitted) *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984); See also, *Robert Orr-Sysco Food Services*, 338 NLRB 614 (2002). The Board and the courts recognize that conduct by third parties is less likely to affect the outcome of an election, and that because unions cannot control nonagents; the equities militate against setting aside elections on the basis of conduct by third parties. *Corner Furniture Discount Center*, 339 NLRB 146 (2003). Further, "[c]ourts are hesitant to overturn elections when statements cannot be attributed to the union because 'there generally is less likelihood that they

affected the outcome.’” *NLRB v. Eskimo Radiator Mfg. Co.*, 688 F.2d 1315, 1319 (9th Cir. 1982), quoting *NLRB v. Mike Yurosek & Sons*, 597 F.2d 661, 663 (9th Cir.), cert. denied 444 U.S. 839 (1979).

Objection 3

Record Evidence

Petitioner alleges that pro-Petitioner employees engaged in electioneering in the polling area. The election was held on December 4 and there were two polling sessions – an early session and a late session. The election was held in a room with three entrances. The election Observers sat at a table close to the door where most of the voters entered. There was a wall with a window directly behind the observers. The blind was drawn on the window so no one could see into or out of the voting room. The Board Agents conducting the election sat at another table that formed an “L” with the observer table. The three doors to the conference room remained closed except when voters entered and exited the rooms. The voters primarily entered the conference room to vote one at a time.

The Employer’s observer Teuscher testified that two voters gave the Petitioner’s Observer Israel Ramirez the thumbs-up sign after they voted. More specifically, she testified that after the two voters cast their ballot and as they walked past the Observers to exit the room, they turned and gave the thumbs-up sign to Israel Ramirez. These two voters did not say anything to Israel Ramirez and he did not say anything to them. Indeed, Teuscher testified that Board Agents running the election “did not allow any communication whatsoever.” Israel Ramirez testified that he did not see anyone give the thumbs-up signal.

Analysis

I credit Teuscher's testimony related to Objection 3. She answered questions without hesitation in an open and frank manner. In crediting Teuscher's testimony, I do not necessarily discredit Ramirez's testimony. He did not specifically deny that two voters gave him the thumbs-up sign; rather he testified that he did not witness that conduct. It is possible that he did not see the two voters give him the thumbs-up sign. As explained below, I find that even crediting Teuscher's testimony related to this objection, that the voters' conduct does not warrant setting aside the election.

There is no evidence that Petitioner's Observer Israel Ramirez talked, communicated, or otherwise signaled to voters. Rather, the record evidence demonstrates that two voters gave a thumbs-up sign to Israel Ramirez after they cast their ballots and as they were exiting the voting area. The voters' gesture was unaccompanied by any verbal exchange or other communication. Because Petitioner was not involved in this alleged misconduct, I apply the third-party conduct test – "whether the misconduct is so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible." *Westwood Horizons Hotel*, 270 NLRB at 803.

I find that the brief and amiable gesture of the two voters did not create an atmosphere of "fear and reprisal" under the third-party conduct test. Notably, the voters' thumbs-up signal was unaccompanied by any verbal exchange or other communication by the voters or Petitioner's observer. In this context, the voters' gesture cannot reasonably be understood to convey any particular meaning and does not rise to the level of conduct prohibited by the Act. Indeed, even applying the more stringent standard for party conduct, the Board has held that a union observer who smiled and gave the thumbs-up signal to voters, did not engage in objectionable because the gesture could not reasonably be understood to convey any particular meaning in the absence of a

verbal exchange. *U-Haul Co. of Nevada, Inc.*, 341 NLRB 195, 196 (2004). Accordingly, I find that the two voters did not engage in objectionable conduct by giving the thumbs-up sign as they exited the polling area.

Recommendation

I recommend that Objection 3 be overruled.

Objection 5

Record Evidence

In Objection 5, Petitioner contends that pro-Petitioner employees engaged in a demonstration while waiting in line to vote. It is undisputed that during the first fifteen or twenty minute of the early voting session about 10 or 15 employees congregated in a line in the corridor outside of the conference room waiting their turn to vote. It is undisputed that the doors to the conference room remained shut, except when a voter was exiting or entering the room. It is further undisputed that the shades were drawn on the conference room window so nobody could see in or out of the voting room.

The record evidence reveals that the voters queued up in the hallway were loud during the first 10 or 15 minutes of the first polling session. Employer Observer Teuscher testified that the voters waiting in line in the hall to vote were laughing talking, and making loud noises. She testified that it was very loud, boisterous, and distracting. Teuscher testified that many of the voters were speaking in Spanish, which she is unable to understand. Some of the voters were speaking in English about how they were going to vote but she does not recall specifically what was said. Teuscher testified that she told a Board Agent about the noise and the Board Agent responded that it was “fine” and was “not a problem.”

Petitioner's Observer Israel Ramirez agreed that the voters lined up in the hall waiting to vote were loud. But he testified that from inside the conference room he could not understand what was being said by the voters; "it was just loud noise." Ramirez did not hear any booing. He did not recall Teuscher alerting a Board Agent to the noise.

Two voters from the early session testified about the conduct of the voters in line to vote – Jamie Sedano (Sedano) and Ennulat. Employer's witness Sedano testified that when he was in line to vote there were about 15 voters in line. About five to seven individuals were in front of him in the line. He testified that some of the voters in line were chanting "yes we can" in Spanish and that some of the voters were saying curse words in Spanish. He did not testify about the context in which the curse words were used or how long or how many voters chanted "yes we can" in Spanish. Voter Ed Mulvey (Mulvey) was in line ahead of Sedano. Sedano testified that when Mulvey walked out of the conference room after voting, the individuals in line behind Sedano "booed" Mulvey. Some of these individuals also spoke to Mulvey but Sedano does not recall what was said. Upon being booed, Mulvey "kind of smiled" and looked embarrassed. Sedano did not know the reason some voters booed Mulvey but he testified that he thought Mulvey was going to vote "no" and that the people who booed him were going to vote "yes."

Petitioner's witness Ennulat testified that he was in line waiting to vote at the same time Sedano was in line. Ennulat testified that there were about 25 people in line in about a 25 foot area. Ennulat was in the front of the queue with about ten other voters. He testified that the voters in line were talking loudly because machines were running in the background and because there were a large number of people in a small area. Ennulat was talking with about 10 voters and they were discussing their opinion that a Board Agent conducting the election was attractive.

He denied that they were discussing how they were going to vote in the election. Rather, he testified, they were talking about “stuff guys talk about.” Ennulat did not hear any booing.

Board Law

In *Hollingsworth*, the Board concluded that third-party (nonagent) electioneering aimed at employees waiting in line to vote warranted setting aside the results of the election. 342 NLRB 556 (2004). In that case, employees were waiting in line to vote when three nonagent employees wearing union t-shirts and buttons arrived and moved up and down the line talking to the employees in Arabic about the reasons they should vote for the union. *Id.* at 557. There were between 15 and 30 voters in line during the electioneering. *Id.* These three individuals spent about fifteen minutes talking to voters but never got into line to vote themselves. Additionally, at least two employees were “physically manhandled” by the nonagent employees in front of the other voters in line. One voter was shoved and instructed to vote yes and another voter was grabbed by shirt and moved ahead in line. The Board concluded that the conduct of the nonagents satisfied the high standard for nonagent electioneering. *Id.* at 558. The Board relied on four factors in reaching its decision. First, the Board noted that the physical manhandling of two voters by the nonagents constituted “serious acts of physical coercion that cannot be dismissed as mere campaign bravado or overzealous partisanship.” *Id.* Second, the Board found that the electioneering was not limited to isolated or brief comments made in passing. Third, the Board found it significant that the majority of the electioneering was not done by employees who were in line to vote but rather, the electioneering was done by individuals who came to the voting area for the purpose of “systemically targeting voters with last minute campaigning.” *Id.* Finally, the Board noted that the electioneering was not isolated. Specifically, multiple individuals were involved, the three nonagents “methodically canvass[ed]

the line of waiting voters,” and a substantial number of voters were exposed to the improper conduct. *Id.*

Similarly, in *Westwood Horizons Hotel*, the Board set aside the results of an election based on third-party conduct. 270 NLRB 802, 803 (1984). In that case, about two weeks prior to the election, a pro-union employee threatened to physically assault several specific employees and any other employees who did not vote for the union. This threat was made in front of about six or seven employees, some pro-union and some not. *Id.* at 802. Then, on the day of the election, the threats were rejuvenated when two pro-union employees physically took an employee by the arm to the voting are and forced another employee to vote by threatening him with physical violence and told him to vote for the union. *Id.* at 802-803. Finally, for about ten minutes during the polling session, about ten employees, who had already voted, stood on both sides of the voting line and repeatedly chanted “Vote for the Union” and “Vote Yes, Vote Yes.” *Id.* at 803. They continued this chanting even after the Board Agent admonished them. Applying the third-party conduct test, the Board concluded that “the threats, when considered with other misconduct occurring on the day of the election, did create a general atmosphere of fear and reprisal that interfered with the election.” *Id.* at 803.

In contrast, in *Rheem Mfg.*, the Board found third-party electioneering insufficient to warrant a new election. 309 NLRB 459 at 463 (1992). In *Rheem*, during two of the voting sessions, an employee wearing a pro-union t-shirt and hat spent a substantial amount of time outside of the cafeteria where the vote was taking place, talking to employees in line waiting to vote and “loudly” encouraging them to vote for the union. *Id.* at 462. On a few occasions, this employee also accompanied groups of employees as they walked from their work stations to the cafeteria “talking with them and otherwise shouting and encouraging them to ‘vote yes.’” *Id.*

Additionally, a different employee was released with his department to vote. As he walked to the cafeteria with the 60 other employees in his department, he loudly campaigned for the union. Then this employee stood outside the cafeteria urging employees to vote for the union and repeatedly asking the voters if they knew that a white female had been promoted over a more senior black man. The Board applied the third-party conduct test. In doing so, the Board noted that there was only one union supporter electioneering outside the cafeteria doors at any given time and concluded that “we do not find this-third party conduct to be so coercive and disruptive as to substantially impair the employees’ exercise of free choice.” *Id.* at 463. See also, *Southeastern Mills*, 227 NLRB at 58 (finding that a single employees’ conduct of sitting outside the polls and predicting how employee has voted or stating that he hoped they voted for the union did not warrant setting aside the election).

Analysis

There is a credibility conflict concerning exactly what happened the first 10 to 15 minutes of the early voting session in the voting line in the hall. I conclude that it is not necessary to resolve these credibility disputes to decide this objection. As explained below, even if I were to credit the Employer’s witnesses Teuscher and Sedano regarding the conduct of the voters waiting in the hallway to vote, this conduct does not warrant setting aside the election.

Even crediting Teuscher and Sedano, the evidence does not support the Employer’s contention that pro-Petitioner employees engaged in “a loud demonstration.” Rather, if credited, Teuscher’s and Sedano’s testimony establishes that for about the first 15 minutes of the early voting session, voters waiting in line to vote were loud and boisterous; an individual who had already voted was booed as he exited the voting room; several voters chanted “yes we can” in Spanish; and a number of voters discussed how they were going to vote. Applying the

heightened third-party conduct standard, I cannot find that this conduct by employees waiting in line to vote “create[d] a general atmosphere of fear and reprisal rendering a free election impossible.” *Westwood Horizons Hotel*, 270 NLRB at 803.

In reaching this conclusion, I find several factors significant. Notably, although the voters waiting to vote were “loud” and “boisterous” and discussed how they were going to vote, there is no evidence that any of these voters explicitly said or did anything intended to persuade employees to vote for the Petitioner. Cf. *Rheem Mfg.*, 309 NLRB at 463 (characterizing loud encouragement to vote for the union electioneering). At most, the loud boisterous behavior lasted 15 minutes during the first of two polling sessions and was observed by 10 to 15 employees out of 33 eligible voters. I find that this loud boisterous talk of voters waiting in line to vote is insufficient to overturn the election results under the less stringent third-party test.

The employees who booed a potential “no” voter after he voted and chanted “yes we can” in Spanish were arguably engaged in electioneering. However, it is significant that this conduct was unaccompanied by threats or physical violence. Moreover, the Employer failed to present sufficient evidence to establish that this conduct was more than isolated and brief in nature. In that regard, there is no evidence concerning how long employees chanted “yes we can” in Spanish and there is no evidence that the “yes we can” chants were heard in the conference room where the voting was taking place. Additionally, the record evidence establishes that only one voter was booed. Finally, the alleged misconduct occurred in the hallway as opposed to inside the conference room where the voting was taking place.¹³ Accordingly, even if I were to credit the Employer’s witnesses, I cannot find that the conduct of the voters waiting to vote created an atmosphere of fear and reprisal that would impair employees’ exercise of free choice. Rather,

¹³ The record does not reflect whether the Board Agent designated the hallway outside of the conference room as a no-electioneering zone.

under these particular circumstances I find that their conduct amounts to nothing more than election-day excitement and overzealous partisanship.¹⁴

I further find *Hollingsworth* and *Westwood Horizons* distinguishable from the instant case. The Board in *Hollingsworth* and *Westwood Horizons* found it significant that the third-party electioneering was accompanied by the physical manhandling of voters and in *Westwood Horizons*, accompanied by threats of additional violence. These factors are strikingly absent from the instant case. In *Hollingsworth*, the Board further found it significant that the electioneering was conducted by individuals who came to the voting area for the sole purpose of targeting voters with last minute campaigning. In contrast, here all of the alleged misconduct is attributed to individuals waiting to vote. Finally, the chanting of “yes we can” is Spanish that took place in the instant case is distinguishable from the electioneering in *Westwood Horizons*. In *Westwood Horizons*, about ten employees, who had already voted, lined up on both sides of the employees waiting to vote, chanted obviously pro-union slogans, and continued to chant even after being admonished by the Board Agent. Here, several employees while waiting to cast their vote chanted the arguably pro-petitioner slogan “yes we can” for an undetermined amount of time. I find the conduct of the voters in this matter more comparable to the conduct in *Rheem Mfg.* 309 NLRB at 463, where the Board found that pro-union employees did not engage in objectionable conduct by loudly encouraging employees on their way to vote to vote for the union.

I recognize that the election result was very close (14 votes for the Petitioner, 14 votes against, and 3 determinative challenges) and that closeness of an election is a factor that I must

¹⁴ I note that the Objection 5 alleges that the Board Agents conducting the election failed to investigate or end the disruptive conduct. As I find that even crediting the Employer’s witnesses that the conduct of the voters waiting in line is not objectionable, it logically follows that the Board Agents did not engage in objectionable conduct by failing to investigate or end the conduct.

take into account. *Pepsi-Cola Bottling Co.*, 291 NLRB 578, 579 (1988). However, even taking into account the closeness of the election result, I nevertheless find that conduct of the employees waiting in line to vote does not warrant overturning that result where the conduct was not so disruptive or coercive that it substantially impaired the employees' exercise of free choice. See *Consumers Energy Co.*, 337 NLRB at 752 and n.2 (stating that the closeness of an election does not alter an objecting party's burden to prove that there has been misconduct that warrants setting aside the election).

Recommendation

I recommend that Objection 5 be overruled.

CONCLUSION

I recommend that the Employer's objections be overruled in their entirety. The Employer has failed to establish that its objections to the election held on December 4, individually or cumulatively, reasonably tended to interfere with employee free choice. As described above, I also recommend that the challenges to the ballots of Donna Teuscher, Josh Ennulat, and Leonardo Garcia be overruled and that their ballots be opened and counted, and that a revised Tally of Ballots issue. Upon the issuance of the revised Tally of Ballots, I recommend that the appropriate certification issue.

EXCEPTIONS

Right to File Exceptions

Pursuant to the provisions of Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may file exceptions to this Report with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001.

Procedures for Filing Exceptions

Pursuant to the Board's Rules and Regulations, Sections 102.111 — 102.114, concerning the Service and Filing of Papers, exceptions must be received by the Executive Secretary of the Board in Washington, D.C. by close of business on April 8, 2015, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file exceptions electronically.** If exceptions are filed electronically, the exceptions will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of exceptions filed by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary of the Board in Washington D.C. and a copy of such request for extension of time should be provided to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on each of the other parties in the proceeding in the same manner or a faster manner as that utilized in filing the request with the Executive Secretary.

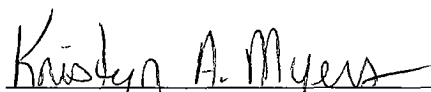
A copy of the exceptions must be served on each of the other parties to the proceeding, as well as on the Regional Director, in accordance with the requirements of the Board's Rules and Regulations.

Filing exceptions electronically may be accomplished by using the E-filing system

on the Agency's website at www.nlr.gov. Once the website is accessed, click on **EFile Documents**, enter the NLRB Case Number, and follow the detailed instructions.

The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

DATED at Denver, Colorado, this 25th day of March, 2015.

A handwritten signature in black ink, reading "Kristyn A. Myers", is written over a horizontal line.

Kristyn A. Myers, Hearing Officer
National Labor Relations Board, Region 27
Byron Rogers Federal Office Building
1961 Stout Street, Suite 13-103
Denver, Colorado 80294

Exhibit 2

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21**

CARGILL, INC.

Employer

and

Case 21-RC-136849

UNITED FOOD & COMMERCIAL WORKERS
UNION LOCAL NO. 324

Petitioner

**SUPPLEMENTAL DECISION
AND
ORDER DIRECTING HEARING
AND
NOTICE OF HEARING**

This Decision¹ contains my determinations regarding the three determinative challenged ballots and the Employer's objections to conduct affecting the results of the election conducted on December 4, 2014,² among the employees of the Employer, in the unit found appropriate for the purposes of collective bargaining ("unit").³ The Employer's objections allege: (1) the dismissal of the petition in Case 21-RC-133636, should have been with prejudice, which would have precluded the processing of the petition in the above-captioned matter; (2) the Petitioner threatened unit employees in order to cause them to drop their opposition to the Petitioner; (3) Petitioner supporters engaged in electioneering in the polling area while the polls

¹ This report has been prepared under Section 102.69 of the Board's Rules and Regulations, Series 8, as amended.

² Unless otherwise specified, all dates herein are 2014.

³ The collective-bargaining unit found appropriate in this matter is composed of:

INCLUDED: All full-time and regular part-time packaging, shipping, and receiving employees employed by the Employer at its facility located at 566 North Gilbert Street, Fullerton, California;

EXCLUDED: All other employees, maintenance employees, terminal employees, quality-control employees, staffing-agency employees, office clerical employees, guards and supervisors as defined in the Act.

were open; (4) the Petitioner instructed its election observer to solicit and encourage electioneering in the polling area just before the polls opened; and (5) while waiting in line to vote, pro-Petitioner unit employees engaged in a loud demonstration just outside the polling room and Board agents made no effort to investigate or end the conduct.

As described below, I have determined that that Employer's Objection No. 1 is without merit, and should be overruled. I have further concluded that the substantial and material factual and legal issues raised by the three determinative challenged ballots and Employer's Objection Nos. 2, 3, 4 and 5 can best be resolved by a hearing, and herein Order and give Notice of such hearing.

Procedural History

The petition in this matter was filed on September 16. Pursuant to a Decision and Direction of Election issued on October 29, an election by secret ballot was conducted on December 4, among the employees in the above-noted unit. The tally of ballots served on the parties at the conclusion of the election showed that of approximately 33 eligible voters, 14 cast ballots for, and 14 against, the Petitioner. There was one void ballot and three challenged ballots, which are sufficient in number to affect the results of the election. The Employer timely filed objections to the election, a copy of which was served upon the Petitioner. A copy of the Employer's objections is attached hereto as Attachment A.

The Challenged Ballots

During the election, the ballots of Josh Ennulat, Leonardo Garcia, and Donna Teuscher were challenged on the grounds that they are office clerical employees, which are excluded from the collective-bargaining unit. Ennulat and Garcia were challenged by the Employer's observer and Teuscher was challenged by the Petitioner's observer. All three names

were listed on the *Excelsior* list proffered by the Employer. The Employer contends that based on the Petitioner's intention to challenge Teuscher, the Employer re-evaluated its view of the unit and decided to challenge Ennulat and Garcia.

Josh Ennulat

According to the Employer, Ennulat works in the shipping office and provides administrative support for orders delivered to customer California Oils Corporation ("Caloils"). Ennulat's primary responsibility is to create and coordinate shipments in the computer system for Caloils. Ennulat ensures that finished goods are delivered to an off-site storage facility and to the appropriate carrier. Ennulat maintains frequent contact with Caloils and the off-site storage facility. These duties occupy over 90 percent of his work time. The Employer concludes that Ennulat is an office clerical and, as such, is not included in the unit.

The Petitioner contends that Ennulat is a "shipping reliever" who performs work in the shipping office, which is in the packaging building, where all other unit employees also work. Ennulat uses a computer to monitor inventory and shipping of products for Caloils. On about 3 out of 5 work days, Ennulat uses a forklift to load trucks along side of other unit employees. Ennulat also frequently performs substitute and overflow loading duties. The Petitioner asserts that Ennulat is a shipping employee who shares a sufficient community of interest with unit employees to warrant his inclusion in the unit.

Leonardo Garcia

With regard to Garcia, the Employer contends that he is the inventory control clerk and, until recently, shared the same office with Ennulat and Teuscher. Garcia also spent some time in the administrative offices, and later worked in the production office, where no unit employees work. Garcia's duties are centered on making sure that the plant's inventory is

properly reflected in the Employer's SAP computer systems. Garcia runs checks on the computer system to ensure that all the data in the system is complete and up to date, and makes adjustments to inventory in the computer system if verified discrepancies are brought to his attention. Ninety percent or more of Garcia's work is related to the SAP computer system. The Employer contends that Garcia has limited contact with unit employees. The Employer concludes that Ennulat is an office clerical employee and, as such, is not included in the unit.

The Petitioner contends that Garcia holds the title of "production controller and shipping" and, until recently, worked in the shipping office. Garcia works directly with unit shift leads Jaime Sedano and Rafael Rodriguez. Garcia receives production orders from Sedano, checks for discrepancies between actual inventory and related computer records, and fixes computer records when necessary. Garcia also works closely with packaging side forklift operators and receiving department employees to perform these duties. According to the Petitioner, Garcia estimates that 60 percent of his time is spent in the office and 40 percent of his time is spent on the shop floor. Garcia often operates a forklift to load finished goods and also substitutes for unit shipping lead Ray Ramirez when he is absent. The Petitioner argues that Garcia is a shipping employee who shares a sufficient community of interest with unit employees to warrant his inclusion in the unit.

Donna Teuscher

Regarding Teuscher, the Petitioner posits that she works in the shipping office as a traffic coordinator, and rarely works outside of the shipping office. The Petitioner contends that she has no duties in packaging, the warehouse, or other areas where bargaining unit employees work. Teuscher spends her workday scheduling trucks to pick up finished goods,

scheduling trucks for the terminal side of the plant,⁴ and interacting with customers. According to the Petitioner, other than with customers and non-unit truck drivers, most of Teuscher's interactions are with Employer supervisors and managers, but not with other employees. The Petitioner concludes that Teuscher is an office clerical employee and, as such, is not included in the unit.

For its part, the Employer contends that Teuscher is the Employer's transportation coordinator. Teuscher works in the shipping office, which she shares with Ennulat, Ramirez, and a temporary employee. Teuscher is responsible for ensuring that the correct type and amount of finished product gets on the right trucks. Teuscher contacts shipping companies to coordinate when trucks come to the facility, and uses the SAP computer system to prepare and print a packing lists. Through the computer system, Teuscher sends the packing lists to the shipping clerk,⁵ who allocates the materials and then informs unit shipping employees of what to load. Teuscher also monitors order fulfillments against truck schedules based on appointment times and the shipper that is assigned to load the truck. The shipper and or the shipping clerk will let Teuscher know of problems with trucks, short shipments, materials that cannot be located, and other issues. Conversely, if Teuscher detects any problems, she will contact the shippers to determine possible causes and solutions. Teuscher regularly fills in for and assists Ramirez and Ennulat. She also performs SAP computer health checks as Garcia does. The Employer contends that Teuscher's regular duties place her in constant daily contact with other unit employees including shipping loaders Tim Albert, Oscar Ramos, and Albert Ramirez, and production leads Jaime Sedano and Rafael Rodriguez. Thus, the Employer concludes that

⁴ The terminal side of the plant is excluded from the unit.

⁵ The shipping clerk currently is a temporary employee.

Teuscher is a plant clerical employee and an integral part of the shipping process, and as such shares a sufficient community of interest with unit employees to warrant her inclusion in the unit.

Upon consideration of the evidence presented and adduced by the investigation, I conclude that the challenges to the ballots cast by Josh Ennulat, Leonardo García and Donna Teuscher raise substantial and material issues of fact that can best be resolved by a hearing.

The Objections and Analysis

Objection No. 1

The election conducted in this matter is invalid because the petition should have been dismissed with prejudice as the result of the dismissal of Case No. 21-RC-133636. The National Labor Relations Board completely failed to address the Employer's sound arguments seeking dismissal in the Employer's Request for Review, thereby improperly failing to follow NLRB practices and regulations and denying the Employer and affected employees due process.

In Case 21-RC-133636, the Petitioner sought to represent a unit of all full-time and regular part-time packaging, shipping, and receiving employees employed by the Employer at its facility located at 566 North Gilbert Street, Fullerton, California. At the hearing conducted in that matter on August 12, the Employer asserted that the petitioned-for unit was not appropriate because it did not include the maintenance, terminal, and quality-control employees. Additionally, the Employer contended that the packaging and shipping leads and a quality-control employee are not supervisors and, therefore, should be included in the unit. The Petitioner took contrary positions and these issues were litigated. During the hearing, the Petitioner stated that it did not wish to proceed to an election in any alternate unit if the unit sought by the Petitioner was deemed to be inappropriate. In the Decision and Order issued on September 11, the Regional Director found that the packaging and shipping leads were not

supervisors as defined in the Act, and should be included in any appropriate unit. Thus, the Regional Director found that the petitioned-for unit was not an appropriate unit because it excluded the packaging and shipping leads and, therefore, the petition was dismissed.⁶ No party requested reconsideration or made any request for review of the Decision and Order.

Thereafter, on September 16, the Petitioner filed the instant petition seeking to represent packaging, shipping and receiving employees employed by the Employer.

On September 23, the hearing which had been initially scheduled in this matter, was reset to commence on October 2.

On September 24, the Employer filed a Motion to Dismiss the Petition with Prejudice, and on September 26, the Employer filed a Reply to Union's Opposition to Motion to Dismiss the Petition. In its motion and its reply, the Employer contended that the unit sought in this matter is identical to the unit sought by the Petitioner in Case 21-RC-133636, and that dismissal of the instant petition was warranted because it was determined in Case 21-RC-133636 that the unit sought by the Petitioner was inappropriate. The Employer further asserted that the Board's Rules and Regulations prohibited the Petitioner from filing a new petition concerning the same unit of the Employer's employees while the period for filing a request for review of the Decision and Order in Case 21-RC-133636 was still pending, and prohibited the Petitioner from filing a new petition to re-hear or re-open the record in Case 21-RC-133636, or to seek reconsideration of the Decision and Order in that case. The Employer also asserted that the instant petition was an effort to litigate issues in an untimely or piecemeal fashion.

⁶ Therein, the Regional Director noted that under these circumstances, it was not necessary to rule on the other issues litigated at hearing.

Later on September 26, the Regional Director issued an Order Denying Employer's Motion to Dismiss Petition with Prejudice, which discussed in detail the various reasons why the Employer's Motion was without merit. For the reasons set forth therein, the Regional Director concluded that neither the prior petition, nor the Decision and Order, foreclosed the Petitioner from filing and pursuing the instant petition, and the petitioned-for unit therein.

On October 1, the Employer filed a Request for Special Permission to Appeal Ruling of the Regional Director Denying Employer's Motion to Dismiss the Petition with Prejudice. By letter dated October 2, the Executive Secretary informed the Employer that its request for special permission to appeal was procedurally improper and would not be considered by the Board, but could instead be considered in connection with a request for review of any subsequent decision issued by the Regional Director.

At hearing on October 2, the Petitioner amended its petition to indicate that it was seeking to represent the unit described above at footnote 3. During the hearing, the Employer and Petitioner took the same positions as in the prior hearing in Case 21-RC-133636, regarding the unit placement of maintenance, terminal and quality-control employees, the supervisory status of packaging leads and a shipping lead, and how both issues apply to the one quality-control employee. At hearing, the parties stipulated that the Regional Director should take administrative notice of the record developed in the hearing in Case 21-RC-133636 to decide the issues raised at the hearing in Case 21-RC-136849. No additional witnesses or evidence were presented at hearing on October 2. During the hearing, the Employer again argued that the petition in Case 21-RC-133636 should have been dismissed with prejudice to refile, the unit sought by the Petitioner was not appropriate, issues should not be relitigated, and, therefore, the

petition should be dismissed. Prior to the hearing's close, the Petitioner confirmed that it wished to proceed to an election in an alternate unit if the unit sought by the Petitioner was deemed to be inappropriate.

On October 9, both parties submitted post-hearing briefs. In its brief, the Employer argued: (1) the petition should be dismissed with prejudice, (2) if the petition is not dismissed, the Employer's October 1 request for a special appeal from the order denying its motion to dismiss should be granted, and alternatively (3) an election should be directed in the unit proposed by the Employer. Additionally, on October 13, the Employer filed a Motion to strike the Petitioner's post-hearing brief, or portions of it regarding the supervisory status of lead employees. Therein, the Employer again argued for the dismissal of the instant petition.

As referenced above, on October 29, the Regional Director issued a Decision and Direction of Election in the instant matter.

On November 12, the Employer filed its request for review of the Decision and Direction of Election, and again argued that the petition should be dismissed with prejudice or, alternatively, an election should be directed in the unit proposed by the Employer.

By Order dated December 3, the Board denied the Employer's Request for Review of the Decision and Direction of Election as it raised no substantial issues warranting review.

In support of Objection No. 1, the Employer references the arguments that it advanced in its September 24 and 26, October 9, and November 12 submissions.

The Petitioner contends that Employer's Objection No. 1 provides no basis to set aside the election.

The Board's Casehandling Manual Part Two Representation Proceedings provides for the *withdrawal* of petitions with 6 months prejudice (Secs. 11112, 11113, and 11118). The Manual provides for dismissal without prejudice of RM and RD petitions, when a union has disclaimed interest in representing the involved employees (Sec. 11124). The Manual makes no provision for the *dismissal* of petitions with prejudice, which has been sought by the Employer.

As detailed above, since the filing of this petition, the Employer has repeatedly advanced various procedural and due process arguments in support of its position that the instant petition should be dismissed. Such arguments were considered and subsequently rejected in the Order issued on September 26, the Decision issued on October 29, and the Board's Order dated December 3. The Employer's motions to dismiss have been fully litigated and the Employer raises nothing new that either was not or could not have been previously litigated in this matter. Finally, inasmuch as the Board has previously denied the Employer's Request for Review, the Employer is not now entitled to relitigate this issue as an objection. See *Pittsburgh Plate Glass v. NLRB*, 313 U.S. 146, 162 (1941); Board's Rules, Secs. 102.67(f) and 102.69(c); *Middletown Hospital Association*, 282 NLRB 541 (1986), and *NTA Graphics, Inc.*, 303 NLRB 801 (1991).

Accordingly, I determine that that Employer's Objection No. 1 is without merit, and should be overruled in its entirety.

Objection No. 2

The Union, by its employees and agents, threatened voting unit employees with harassment and other consequences if they did not cease exercising their Section 7 right to oppose union representation. This illegal conduct took place between the date the petition was filed and the date election was held.

The Employer contends that a unit employee, herein referred to as Witness A, will testify in support of Employer's Objection No. 2.

According to the Employer, Witness A will testify that at a meeting conducted by the Employer, the witness told employees that the Union did not help strikers when the witness was involved in a strike at a former employer. A few days later, during the critical period, Union Organizing Director Gilbert Davila visited Witness A at his home, as he had done once before. Davila told Witness A that he heard about what the witness said at the meeting, accused the witness of not telling the truth, and ended their argument with words to the effect that, "I know where you stand and I will not be back to your house unless I hear another story like this and then I will have to come talk to you."

Regarding Employer's Objection No. 2, the Petitioner denies having engaged in any objectionable conduct.

Inasmuch as there are substantial and material factual and legal issues with regard to Employer's Objection No. 2, I shall order a hearing for this objection.

Objection No. 3

Union supporters engaged in electioneering in the polling area while the polls were open.

Objection No. 4

Union employees instructed the Union observer to solicit and encourage electioneering in the polling area just before the polls opened on December 4, 2014.

Objection No. 5

Union supporters engaged in a loud demonstration just outside the polling room while waiting in line to vote and while the polls were

open and no effort was made by Board agents conducting the election to investigate or end this disruptive and illegal conduct.

Inasmuch as they are related, I will consider Employer's Objection Nos. 3, 4, and 5 together. The Employer contends that two unit employees and another person, herein referred to as Witness B, Witness C, and Witness D, will testify in support of these objections.

According to the Employer, Witness B will testify that while serving as the Employer's election observer, unidentified pro-Petitioner employees walked within several feet of the observer's table after they left the voting booth and gave the "thumbs up" gesture to the Union observer, in the presence of voters, observers, and the Board agents conducting the election. Nothing was said to these employees about electioneering. Witness B will further testify that that while serving as the Employer's election observer, the witness heard a lot of loud noise coming from a line of voters waiting to vote just outside the door to the polling area, which was about 30 to 40 feet from the observer table. When Witness B brought this to the attention of the Board agents, they allegedly told Witness B to disregard it.

The Employer contends that Witness C will testify that while the witness was in the polling area, the witness was booed by unidentified pro-Petitioner employees who were waiting in line to vote.

In support of Objection No. 4, the Employer contends that Witness D will testify that inside the polling area, as the preelection conference was ending, Director Davila called to the Petitioner observer by name, and gave the observer a "thumbs up" sign, which was obscured behind a folder Davila was carrying. The Employer contends that this constitutes evidence that the Petitioner had worked out a system of campaigning in the polling area while the polls were open.

For its part, the Union denies that the conduct alleged in Employer's Objection Nos. 3, 4 and 5 constitutes objectionable conduct.

Inasmuch as there are substantial and material factual and legal issues with regard to Employer's Objection Nos. 3, 4, and 5, I shall order a hearing for this objection.

Conclusions

In view of the conflicting positions of the parties and the substantial and material factual and legal issues raised by the challenges to the ballots cast by Josh Ennulat, Leonardo Garcia, and Donna Teuscher, and Employer's Objection Nos. 2, 3, 4, and 5, I conclude that such challenges and objections can best be resolved by a hearing. Accordingly, pursuant to Section 102.69(d) of the Board's Rules and Regulations, Series 8, as amended, I shall direct a hearing on the above-mentioned challenged ballots and on Employer's Objection Nos. 2, 3, 4, and 5.

As noted above, I have determined that Employer's Objection No. 1 is without merit, and should be overruled in its entirety.

Right to File Exceptions: Under the provisions of Secs. 102.69 and 102.67 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the Board in Washington, D.C. The request for review must be received by the Board in Washington, D.C. by March 11, 2015. Under the provisions of Sec. 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Supplemental Decision, is not part of the record before the Board unless appended to the request for review or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not

included in the Supplemental Decision shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

Procedures for Filing Exceptions: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, exceptions must be received by the Executive Secretary of the Board in Washington, D.C. by close of business on **March 11, 2015** at 5:00 p.m. Eastern Time, unless filed electronically.

Consistent with the Agency's E-Government initiative, parties are encouraged to file exceptions electronically. If exceptions are filed electronically, the exceptions will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of exceptions filed by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁷ A copy of the exceptions must be served on each of the other parties to the proceeding, as well as to the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

ORDER

IT IS HEREBY ORDERED that a hearing be held before a duly designated hearing officer for the purpose of receiving evidence to resolve the issues raised by the

⁷ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.


challenges to the ballots cast by Josh Ennulat, Leonardo Garcia, and Donna Teuscher, and by Employer's Objection Nos. 2, 3, 4, and 5.

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting such hearing shall prepare and cause to be served upon the parties a report containing the resolution of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of the challenges to the ballots cast by Josh Ennulat, Leonardo Garcia, and Donna Teuscher, and the disposition of Employer's Objection Nos. 2, 3, 4, and 5. The provisions of Section 102.69 of the above Rules shall govern with respect to the filing of exceptions or an answering brief on the exceptions to the hearing officer's report.⁸

NOTICE OF HEARING

PLEASE TAKE NOTICE that, on March 5, 2015, **and such consecutive days thereafter until concluded**, at 9:00 a.m., PST, in Hearing Room 903, Ninth Floor, 888 South Figueroa Street, Los Angeles, California, a hearing will be conducted for the purposes set forth in the above Order, at which time and place the parties will have the opportunity to appear in person, or otherwise, and give testimony.

Dated at Los Angeles, California on February 25, 2015.



Olivia Garcia
Regional Director
Region 21
National Labor Relations Board

⁸ This direction of hearing is subject to special permission to appeal in accordance with Section 102.69(i)(1) and Section 102.64 of the Board's Rules and Regulations, Series 8, as amended.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CARGILL, INC.,)	
)	
Employer,)	
)	
and)	Case No. 21-RC-136849
)	
UNITED FOOD AND COMMERCIAL)	
WORKERS UNION LOCAL NO. 324)	
)	
)	
Petitioner.)	
_____)	

**EMPLOYER'S OBJECTIONS TO CONDUCT
AFFECTING THE RESULTS OF THE ELECTION**

On December 4, 2014, an election was held in the above-referenced matter. On that day, the ballots were counted. The tally included 14 yes votes for the Petitioner United Food and Commercial Workers Union Local No. 324 (hereinafter "Petitioner" or the "Union"), 14 no votes cast for Cargill, Inc. ("Cargill" or "Employer"), 3 challenged ballots and 1 void ballot. Pursuant to Section 102.69 of the National Labor Relations Board's ("the Board") Rules and Regulations, the Employer files these Objections to conduct affecting the results of the election.

OBJECTION NO. 1: The election conducted in this matter is invalid because the petition should have been dismissed with prejudice as the result of the dismissal of Case No. 21-RC-133636. The National Labor Relations Board completely failed to address the Employer's sound arguments seeking dismissal in the Employer's Request for Review, thereby improperly failing to follow NLRB practices and regulations and denying the Employer and affected employees due process.

OBJECTION NO. 2: The Union, by its employees and agents, threatened voting unit employees with harassment and other consequences if they did not cease exercising their Section 7 right to oppose union representation. This illegal conduct took place between the date the petition was filed and the date election was held.

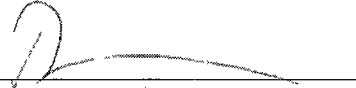
OBJECTION NO. 3: Union supporters engaged in electioneering in the polling area while the polls were open.

OBJECTION NO. 4: Union employees instructed the Union observer to solicit and encourage electioneering in the polling area just before the polls opened on December 4, 2014.

OBJECTION NO. 5: Union supporters engaged in a loud demonstration just outside the polling room while waiting in line to vote and while the polls were open and no effort was made by Board agents conducting the election to investigate or end this disruptive and illegal conduct.

HEARING REQUESTED: The Employer requests a hearing on the genuine issues of material facts raised by these Objections, which will be supported by competent evidence that will be timely submitted to the Regional Director in accordance with the Board's Rules and Regulations. Based on the evidence presented, the Employer requests that the results of the December 4, 2014 election be set aside and that the petition be dismissed with prejudice.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'D. Topolski', is written over a horizontal line.

Douglas M. Topolski

Daniel A. Adlong, Esq.

**Ogletree, Deakins, Nash, Smoak
& Stewart, P.C.**

1909 K Street, N.W., Suite 1000

Washington, DC 20006

(202) 263-0242 Attorneys for Respondent,
Cargill, Inc.


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of December 2014, the foregoing **Employer's Objections to Conduct Affecting the Election** was filed electronically and that service copies were sent via e-mail to:

Robert A. Cantore, Esq.
Gilbert & Sackman
3699 Wilshire Blvd Suite 1200
Los Angeles, CA 90010
rac@gslaw.org

Olivia Garcia, Regional Director
National Labor Relations Board, Region 21
888 S. Figueroa Street, 9th Floor
Los Angeles, California 90017
olivia.garcia@nlrb.gov

Sylvia Meza, Board Agent
National Labor Relations Board, Region 21
888 S. Figueroa Street, 9th Floor
Los Angeles, California 90017
sylvia.meza@nlrb.gov



Douglas Topolski

Exhibit 3

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 21

In the Matter of:

Cargill, Inc.,

Case No. 21-RC-136849

Employer,

and

United Food & Commercial
Workers Union, Local 324,

Petitioner.

Place: Los Angeles, California

Dates: March 5, 2015

Pages: 23 through 189

Volume: 2

OFFICIAL REPORTERS

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Phoenix, AZ 85003
(602) 263-0885

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

In the Matter of:

CARGILL, INC.,

Employer,

and

UNITED FOOD & COMMERCIAL
WORKERS UNION, LOCAL 324,

Petitioner.

Case No. 21-RC-136849

The above-entitled matter came on for hearing, pursuant to notice, before **KRISTYN A. MYERS**, Hearing Officer, at the National Labor Relations Board, Region 21, 888 South Figueroa Street, Ninth Floor, Los Angeles, California 90017, on **Thursday, March 5, 2015, at 9:01 a.m.**

A P P E A R A N C E S

On behalf of the Petitioner:

ROBERT A. CANTORE, ESQ.
GILBERT & SACKMAN
3699 Wilshire Boulevard, Suite 1200
Los Angeles, California 90010
Tel. 323-938-3000
Fax: 323-937-9139

On behalf of the Employer:

DOUGLAS M. TOPOLSKI, ESQ.
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
1909 K Street NW, Suite 100
Washington, DC 20006
Tel. 202-887-0855
Fax. 202-887-0866

On behalf of the Regional Director:

THOMAS RIMBACH, ESQ.
NATIONAL LABOR RELATIONS BOARD - REGION 21
888 South Figueroa Street, Ninth Floor
Los Angeles, California 90017
Tel. 213-894-5041
Fax: 213-894-2778

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Darren Meade	35	60	70	76	
Donna Teuscher	82	97 109			
Roman Smith	115	117			
Jaime Sedano	136	138	142	142	
Josh Ennulat	147	155	161		
Leonard Garcia	162				
Israel Ramirez	168				
Gilbert Davila	170	175			
Darren Meade	179	182			

E X H I B I T S

<u>EXHIBIT</u>	<u>IDENTIFIED</u>	<u>IN EVIDENCE</u>
Board:		
B-1 (a) through B-1 (c)	59	59
Employer:		
E-1	39	41
E-2	43	43
E-3	45	45
E-4	46	46
E-5	51	146
E-6	55	59
E-7	59	59
E-8	59	59
Petitioner:		
P-1	59	60
Joint:		
J-1	146	146

P R O C E E D I N G S

HEARING OFFICER MYERS: The hearing already in order.

This is a hearing before the National Labor Relations Board in the matter of Cargill, Inc.; case number 21-RC-136849, pursuant to the order of the Regional Director, dated February 25th, 2015. The Hearing Officer conducting this hearing is Kristyn Myers. The official reporter makes the only official transcript of these proceedings. And all citations and briefs and arguments must refer to the official reporter.

In the event that any of the parties wishes to make off-the-record remarks, request to make such remarks should be directed to the Hearing Officer and not to the official reporter. Statements of reasons in support of motions and objections should be specific and concise. Exceptions automatically follow all adverse rulings. Objections and exceptions may, on appropriate request, be permitted to the entire line of questioning.

It appears, from the Regional Director's order, dated February 25th, 2015, that this hearing is held for the purpose of taking evidence concerning whether the Petitioner engaged in objectionable conduct by the following: One, organizing director Gilbert Davila threatened unit employees in order to cause them to drop their opposition to the Petitioner; two, supporters of the Petitioner engaged in electioneering in the polling area while the polls were open; three, the Petitioner

1 instructed its election observer to solicit and encourage
2 electioneering in the polling area just before the polls
3 opened; and, four, while waiting in line to vote, pro-
4 Petitioner employees engaged in a loud demonstration just
5 outside the polling room and Board agents made no effort to
6 investigate or end the conduct.

7 And, additionally, this hearing is held for the purpose of
8 taking evidence concerning the challenges to the ballots of
9 Josh Ennulat, Leonardo Garcia and Donna Teuscher on the grounds
10 that they are office clerical employees, which are excluded
11 from the collective bargaining unit.

12 In due course, the Hearing Officer will prepare and file
13 with the Board her report and recommendations in this
14 proceeding and will cause a copy thereof to be served on each
15 of the parties. The procedure to be followed from that point
16 forward is set forth in section 102.69 rules and regulations.

17 Will counsel and other representatives for the parties
18 please state their appearances for the record?

19 For the Petitioner?

20 MR. CANTORE: Robert Cantore of Gilbert & Sackman.

21 HEARING OFFICER MYERS: For the Employer?

22 MR. TOPOLSKI: Douglas Topolski, Ogletree, Deakins.

23 HEARING OFFICER MYERS: And for the Regional Director?

24 MR. RIMBACH: Thomas Rimbach, R-I-M-B-A-C-H. I'm here as
25 representative of the Regional Director to see that the

1 evidence adduced during the investigation is made available to
2 the Hearing Officer. In pursuance of this function, I may ask
3 some questions, and, if necessary, call witnesses. I want to
4 say that I am not here to support any preconceived positions.
5 My services are equally at the disposal at the Hearing Officer
6 and all parties.

7 HEARING OFFICER MYERS: Are there any other persons,
8 parties or labor organizations in the hearing room at this time
9 who claim an interest in these proceedings?

10 Let the record show no response.

11 Will the parties please identify the issues for hearing and
12 their position on each issue? We'll start with the Employer.

13 MR. RIMBACH: Oh, sorry. I'll just introduce the formal
14 papers right now. Will now --

15 HEARING OFFICER MYERS: Sure.

16 MR. RIMBACH: -- be a good chance? I would like to offer
17 the formal papers at this time marked as Board Exhibits 1(a)
18 through 1(c). The parties have been given the opportunity to
19 review the formal papers prior to going on the record.

20 HEARING OFFICER MYERS: Okay. Will the Employer please
21 identify the issues for hearing and your position on each
22 issue?

23 MR. TOPOLSKI: I think the Hearing Officer did a great job
24 of identifying the issues for the hearing. And our positions
25 are with respect to the three challenge ballots, that all of

1 them are office clericals and should be excluded. And with
2 respect to each incident of objectionable conduct, that the
3 Hearing Officer should find that the objectionable conduct
4 occurred. And, in the event necessary, to void the results of
5 the election and rerun it if -- if required.

6 I reserve obviously the right to withdraw those objections,
7 if necessary -- at any --

8 HEARING OFFICER MYERS: Yes.

9 MR. TOPOLSKI: -- point in time.

10 HEARING OFFICER MYERS: Thank you. And for the Petitioner?

11 MR. CANTORE: For the Petitioner, with respect to the
12 objections, our positions are, one, we didn't do it, and,
13 number two, even if we did, it doesn't -- the conduct does not
14 amount to grounds for overturning an election. With respect to
15 the three challenged ballots, our position is that John
16 Ennulat, Leonardo Garcia are proper -- should be properly
17 included in the bargaining unit and their ballots counted,
18 while Donna Teuscher -- I'm not sure I'm pronouncing any of
19 these correctly --

20 MR. TOPOLSKI: Teuscher.

21 MR. CANTORE: -- is an office clerical and should be
22 excluded.

23 HEARING OFFICER MYERS: Okay. Thank you. Are there any
24 other issues that need to be addressed before we start with our
25 first -- first witness?

1 MR. CANTORE: Well, since we both agree that Donna is an
2 officer clerical, why are we even having the hearing on that?

3 MR. TOPOLSKI: I think what we need to do is we need to
4 make a determination as to whether Donna Teuscher is an officer
5 clerical in light of what the other two do as well, because it
6 may very well be the case that the Hearing Examiner may
7 determine that one, two or all three of these individuals, in
8 light of what they do, where they sit and who they interact
9 with, may or may not be office clericals or plant clericals.
10 So I think we need to develop evidence on all three so that you
11 have the fullest opportunity to make the determination as to
12 which, if any, of these are in the unit or out.

13 HEARING OFFICER MYERS: So it's my understanding then that
14 the Employer's not willing to stipulate right now that Donna
15 Teuscher is an officer clerical?

16 MR. TOPOLSKI: It may be the case that all three are plant
17 clericals. I don't know yet. We'll have to see how the
18 evidence shakes you think.

19 HEARING OFFICER MYERS: Okay. We can maybe revisit that at
20 the end of hearing.

21 MR. CANTORE: Again, I'm wondering why we're going to a
22 hearing on having any evidence on Donna when both parties agree
23 at the beginning that she's an office clerical.

24 HEARING OFFICER MYERS: I understand your position, but
25 absent a stipulation by both parties, we're going to have to

1 receive evidence on that issue and we'll address it at the end
2 of the hearing.

3 MR. TOPOLSKI: Let me --

4 MR. CANTORE: Very good.

5 MR. TOPOLSKI: Let me clarify my position.

6 HEARING OFFICER MYERS: Yes.

7 MR. TOPOLSKI: All right? If it is determined that
8 Mr. Ennulat and Mr. Garcia are plant clericals, then it's
9 pretty clear to me that Mr. -- Ms. Teuscher is a plant clerical
10 as well. All right?

11 HEARING OFFICER MYERS: Okay.

12 MR. TOPOLSKI: But it's our position initially that -- that
13 all three are probably excluded as opposed to included. But I
14 will tell you that if any of the other two are included, then
15 Ms. Teuscher should probably be included as well.

16 HEARING OFFICER MYERS: Okay.

17 MR. TOPOLSKI: Does that -- does that clarify it for you?

18 MR. CANTORE: That does.

19 MR. TOPOLSKI: Okay.

20 HEARING OFFICER MYERS: Thank you.

21 MR. TOPOLSKI: Thank you.

22 HEARING OFFICER MYERS: And when we were off the record, we
23 discussed that there may be subpoena issues and the parties
24 agreed that we will revisit those issues at the end of the
25 hearing if the subpoena is still relevant.

1 Okay. So please be aware -- actually, no, that's all I
2 have. At this time we'll ask the parties to proceed with
3 their presentation of evidence with the Petitioner -- no, I'm
4 sorry -- with the Employer going first. Exhibits should be
5 marked Employer's or Petitioner's 1 following chronologically.

6 Employer, please present your first witness.

7 MR. TOPOLSKI: We'd like to call first Mr. Darren Meade.

8 Ms. Myers, can we tell everyone to turn their ringers off
9 on their phones?

10 HEARING OFFICER MYERS: Oh. Make sure please, everyone,
11 that you do not have your ringers on on your phones.

12 MR. CANTORE: I just turned it off.

13 I'm sorry, what was the witness' last name?

14 MR. TOPOLSKI: Meade, M-E-A-D-E.

15 The first question is he's going to spell it for everyone.

16 HEARING OFFICER MYERS: Oh, please stand, Mr. Meade.

17 MR. MEADE: Oh, I've got to take the oath?

18 HEARING OFFICER MYERS: Yes. Please raise your right hand.

19 Whereupon,

20 **DARREN MEADE**

21 having been duly sworn, was called as a witness herein and was

22 examined and testified as follows:

23 HEARING OFFICER MYERS: Please take a seat.

24 Will you please state and spell your name for the record?

25 MR. TOPOLSKI: Darren Meade, D-A-R-R-E-N, M-E-A-D-E.

1 HEARING OFFICER MYERS: You may proceed with questioning.

2 MR. TOPOLSKI: All right.

3 **DIRECT EXAMINATION**

4 Q BY MR. TOPOLSKI: Good morning, Mr. Meade. How are you?

5 A Just dandy.

6 Q Okay. Let me -- let me start by -- by saying you work for
7 Cargill, correct?

8 A Correct.

9 Q You work at the Fullerton facility, correct?

10 A Correct.

11 Q All right. And what is your position at the Fullerton
12 facility?

13 A My title is lead operations supervisor.

14 Q Okay. In 25 words or less, what does that entail?

15 A I oversee the day-to-day operations of the packaging
16 facility as well as the terminal area in Fullerton.

17 Q Okay. Now, as part of your duties, are you familiar with
18 the duties and responsibilities of the three people who are
19 subject to the challenged ballots today?

20 A Yes, I am.

21 Q And that would be Mr. Ennulat, correct?

22 A Correct.

23 Q Ms. Teuscher?

24 A Correct.

25 Q And Mr. Leo Garcia, correct?

1 A Correct.

2 Q Okay. Let me see if we can all make this as short as
3 possible and get right to the point here.

4 A Okay.

5 Q What is Mr. Ennulat's title?

6 A Right now it's CalOil's coordinator.

7 Q Okay. And -- and, for the record, that's E-N -- as in
8 Nancy -- N -- as in Nancy -- U-A-L-T (sic).

9 MR. CANTORE: And CalOil.

10 MR. TOPOLSKI: No, no. Mr. Ennulat. First name --

11 MR. CANTORE: I know. But CalOil?

12 MR. TOPOLSKI: Oh, CalOil, we were spelling that capital C-
13 A-L, capital O-I-L, one word.

14 MR. CANTORE: Very good.

15 MR. TOPOLSKI: All right.

16 Q BY MR. TOPOLSKI: And when did Mr. Ennulat get placed in
17 that position?

18 A Approximately August of 2014.

19 Q Did you have any personal involvement in placing
20 Mr. Ennulat in that position?

21 A Yes, I did.

22 Q And can you tell me what the was?

23 A I made the decision to place Josh in that position so that
24 we could have a full-time staff member coordinating the
25 CalOil's customer.

1 Q Okay. Now, first tell me why we needed that position.

2 A So, CalOils is a customer of ours that requires special
3 attention when it comes to shipping products as well as
4 quality. And so --

5 Q Let me stop you right there. What kind of special
6 attention did it need?

7 A Special attention in the fact that we store product here
8 at -- we store product in Fullerton, ship it to a third-party
9 warehouse, and then from there it goes to the customer -- the
10 customers. And all that coordination requires someone at our
11 facility to coordinate all that.

12 Q Okay. Do we have a name for that -- that off-site
13 distribution center or that off-site storage center?

14 A Yes, we do.

15 Q What do we call it?

16 A It's call the Biagi warehouse.

17 Q Okay. Now, you also said they had certain quality
18 considerations that needed to be addressed. What were they?

19 A Correct. So they have daily production logs every time we
20 run CalOils that they require with every shipment.

21 Q Okay. And who -- who created this position?

22 A Essentially me as well as other managers or supervisors.

23 Q Okay. Is there a written job description for that
24 position?

25 A No, there is not currently.

1 Q And why not?

2 A Because that -- that job function was not budgeted for
3 this fiscal year.

4 Q Thank you. Now, who selected Mr. Ennulat for that
5 position?

6 A I did.

7 Q And why did you select him?

8 A Because he knew the functions of SAP.

9 Q Okay. What --

10 A And WM6. He knew the computer portions of that position.

11 Q Okay. For the record, what is SAP? Because we haven't
12 talked about that.

13 A Yeah. SAP is our -- our ERP system that we use in our
14 facility to coordinate inventory and production.

15 Q Now, you know, Mr. Meade, every time you say an acronym,
16 we're going to ask you what that is. So what is the --

17 A Yeah.

18 Q -- ERP system?

19 A ERP is Enterprise Resource Planning, a program, and that
20 is basically the brains behind all our operations there.

21 Q Okay. So is it fair to say that the SAP system is the
22 computer system we use to track what goes on in the facility?

23 A Yep. Everything from accounting to production.

24 Q Okay. Now, what is WM6?

25 A WM6 is a warehouse management tool that we use in addition

1 to SAP.

2 Q Okay now, before we go into the specific duties of -- of
3 Mr. Ennulat, let me see if we can get the physical lay of the
4 land.

5 A Okay.

6 Q All right? I'm going to show you what I'm going to mark
7 as Employer Exhibit 1.

8 MR. TOPOLSKI: And, Mr. Cantore, you're familiar with this
9 system. It's DOTS.

10 MR. CANTORE: I've got the old one.

11 MR. TOPOLSKI: That's -- yeah, but that's a -- that's a --
12 this is a much smaller version. You'll see.

13 MR. CANTORE: Very good.

14 MR. TOPOLSKI: I'm going to mark these as E-1 just to --

15 HEARING OFFICER MYERS: Thank you.

16 **(Employer Exhibit Number 1 Marked for Identification)**

17 Q BY MR. TOPOLSKI: I'm showing you what's been marked as
18 Exhibit 1, Employer's Exhibit 1. Can you tell me what that is?

19 A It's the layout of the administrative office area.

20 Q Okay. Let's real quickly go through and identify what's
21 what.

22 A Okay.

23 Q There's -- there's a large area marked as DOT number one.
24 What is that?

25 A That's the administrative area where several workers sit.

1 Q Okay. Who sits there generally?

2 A Generally that would be individuals in our accounting
3 department; accounts payable, accounts receivable, controller,
4 et cetera.

5 Q Okay. Let me -- what's number two?

6 A Number two is where a doorway is between the shipping
7 office and the administrative office.

8 Q Okay. And what is number three?

9 A Number three is a door going from the shipping office to
10 the warehouse.

11 Q Okay. And -- and what is -- what is number four?

12 A Number four is a window where the truckdrivers can come to
13 the office to check?

14 Q Okay. When truckdrivers come to the office to check in,
15 who do they talk with?

16 A Usually the shipping clerk.

17 Q Okay. Ask who is that right now?

18 A Right now it's being held by a temporary worker.

19 Q Okay. Is there anybody else they would talk to?

20 A Anyone in that office, essentially, really.

21 Q Okay, all right. And what is number 6?

22 A Number 6 is -- that is a -- it's a cubicle area where
23 Leonardo used to sit.

24 Q Okay. Leonardo, you mean Mr. Leonardo Garcia --

25 A Correct.

1 Q -- who is one of the challenged ballots?

2 A Yes.

3 Q Okay

4 MR. TOPOLSKI: I'd like to move for the admission of
5 Employer's Exhibit 1.

6 HEARING OFFICER MYERS: Any objections?

7 MR. CANTORE: No.

8 MR. RIMBACH: No.

9 Q BY MR. TOPOLSKI: Now I'm going to show you --

10 HEARING OFFICER MYERS: Petitioner's -- or I'm sorry.

11 MR. TOPOLSKI: Oh, I'm sorry, Your Honor.

12 HEARING OFFICER MYERS: Employer's Exhibit 1 is received.

13 **(Employer Exhibit Number 1 Received into Evidence)**

14 (Counsel confer)

15 Q BY MR. TOPOLSKI: Okay. Now I want to show you what's
16 marked as Employer's Exhibit 2.

17 HEARING OFFICER MYERS: Thank you.

18 Q BY MR. TOPOLSKI: Can you identify that picture for me?

19 A This is a photograph of the shipping office.

20 Q Okay. And with respect to Employer's Exhibit 1, what DOT
21 is that?

22 A The one -- or position 1 is the shipping clerk.

23 Q No, I'm talking about --

24 A Oh.

25 Q This is a picture of which --

1 A Oh.

2 Q -- block on Exhibit 1?

3 A Oh, number 5.

4 Q Okay.

5 A Sorry about that.

6 Q All right. And there are various DOTs on this picture

7 too, correct?

8 A Correct.

9 Q And can you tell me who sits at each one? Who sits at DOT

10 1?

11 A So DOT 1 is the shipping clerk position.

12 Q Okay. Who sits at DOT 2?

13 A Donna Teuscher.

14 Q All right. Who sits at DOT 3?

15 A Ray Ramirez.

16 Q Okay. Do you know whether he was eligible to vote in this

17 proceeding?

18 A He was eligible, yes.

19 Q Okay. And what's

20 Q Okay. And what's Ray Ramirez's position?

21 A He is the shipping team leader.

22 Q Okay. And who sits at desk number 4?

23 A Josh Ennulat.

24 Q Okay.

25 MR. TOPOLSKI: I would like to move for the admission of

1 Employer's Exhibit 2.

2 HEARING OFFICER MYERS: Any objections?

3 MR. CANTORE: Did we have testimony on 3 and I missed it?

4 MR. TOPOLSKI: I'm sorry. Yeah, you did.

5 Q BY MR. TOPOLSKI: Who sits at DOT number 3?

6 A Ray Ramirez.

7 Q Okay.

8 MR. CANTORE: Who sits at 2 then?

9 THE WITNESS: Donna Teuscher.

10 MR. CANTORE: I thought Donna sat at 1.

11 THE WITNESS: No.

12 MR. CANTORE: Did we miss 1 then?

13 THE WITNESS: No. I said a shipping clerk sits there.

14 MR. CANTORE: Oh, 1 is -- okay. I missed -- that's the
15 one I missed, and everyone else was out of line. Very sorry.

16 MR. TOPOLSKI: No problem.

17 HEARING OFFICER MYERS: No objections to Employer's
18 Exhibit 2?

19 MR. CANTORE: No objections. No, thank you.

20 MR. RIMBACH: no.

21 HEARING OFFICER MYERS: Employer's Exhibit 2 is admitted.

22 **(Employer Exhibit Number 2 Received into Evidence)**

23 Q BY MR. TOPOLSKI: Okay. Next, I'm going to show you what
24 I'm going to mark as Employer's Exhibit 3 and ask you if you
25 can identify this picture for me. And can you tell me what

1 this depicts?

2 A This is another angle of the shipping office, showing the
3 door leading from the shipping office to the administrative
4 office area.

5 Q Okay. And if you took a look at Exhibit 1, that would be
6 from DOT what to DOT what?

7 A That would be from DOT 5 to DOT 1.

8 Q Okay, all right. And but which doorway are we looking at?

9 A Number 2.

10 Q Number 2.

11 A Looking at number 2.

12 Q All right.

13 MR. CANTORE: Looking at number 2 from where?

14 THE WITNESS: No, that door is number 2. What you see in
15 the picture is DOT number 2.

16 MR. CANTORE: And you're looking at it from where is my
17 question.

18 THE WITNESS: DOT number 3.

19 MR. CANTORE: DOT number 3?

20 THE WITNESS: Correct.

21 MR. TOPOLSKI: Correct.

22 Q BY MR. TOPOLSKI: Facing DOT 3 taking a picture at DOT 2.
23 Does that make sense?

24 A Yeah.

25 Q Okay. I'm going to show you what I'm marking as Exhibit

1 Number 4.

2 HEARING OFFICER MYERS: Do you move to admit --

3 MR. TOPOLSKI: Yes, please. Move for the admission of
4 Exhibit 3.

5 HEARING OFFICER MYERS: Any objections from Petitioner?

6 MR. CANTORE: No.

7 HEARING OFFICER MYERS: Exhibit 3 is admitted. Employer
8 Exhibit 3 is admitted.

9 **(Employer Exhibit Number 3 Received into Evidence)**

10 Q BY MR. TOPOLSKI: Now I'm going to show you what I have
11 marked as Employer Exhibit 4. Can you tell me what that is a
12 picture of?

13 A That, again, is another angle of the shipping office.

14 Q And that's from where to where?

15 A Standing at DOT number 2 looking at DOT number 3.

16 Q Okay. Now does that also show the location of DOT number
17 4?

18 A Yes, it does.

19 Q Okay. And that's the window.

20 A That's the window, yeah.

21 Q All right.

22 A Correct.

23 Q Okay, all right. Now that we have the lay of the land --

24 HEARING OFFICER MYERS: Do you move to admit Number --

25 MR. TOPOLSKI: Please. Move for the admission of Employer

1 Exhibit 4.

2 HEARING OFFICER MYERS: Any objections?

3 MR. CANTORE: None.

4 HEARING OFFICER MYERS: Good. Employer's Exhibit 4 is
5 received.

6 **(Employer Exhibit Number 4 Received into Evidence)**

7 Q BY MR. TOPOLSKI: Okay. Now that we have the lay of the
8 land, can you tell us what it is Mr. Ennulat does?

9 A Mr. Ennulat is the travel agent, essentially, for CalOils
10 Corporation. In that, he coordinates shipments from the
11 Fullerton warehouse to the Biagi warehouse, as well as looking
12 at inventory and communicating -- being the liaison between
13 Fullerton and CalOils.

14 Q And exactly how does he do that?

15 A Through a multitude of resources, mainly email, phone
16 calls, and SAP/WM6.

17 Q Okay. And from where does he do that?

18 A He does that at his desk.

19 Q Now during the course of the day, do you get to observe
20 him, what he does and where he goes?

21 A Yes, I do.

22 Q About how much of his time would you say he spends at his
23 desk?

24 A I would say 80 to 85 percent of his time is spent at the
25 desk.

1 Q Okay. Does he require the services of any of the loaders
2 or the shipping people to perform the functions of his job?

3 A Only to load trucks for CalOils. But with regards to the
4 computer, no.

5 Q Who does he contact in the course of his daily
6 interactions while he sits at his desk?

7 A Donna Teuscher, Ray Ramirez, me.

8 Q What about outside parties? I want the Hearing Examiner
9 to understand exactly what he does with respect to acting as,
10 quote, the travel agent, end quote, for the CalOils products.

11 A Right. So he'll contact trucking companies and coordinate
12 shipments, so that trucks arrive in Fullerton. And we can
13 coordinate shipments from Fullerton to an outside warehouse.
14 He'll be in touch with personnel at Biagi as well, to ensure
15 that they have dock loading times, and so that they can receive
16 product in there.

17 Q Well how does he know when CalOils is going to request
18 some product from us?

19 A CalOils sent out a weekly email saying that they want a
20 certain amount of product for that week. And from there, Josh
21 will go from there and coordinate the shipments to -- from
22 Fullerton to Biagi.

23 Q Who does that email go to?

24 A Josh's email?

25 Q Yeah. No, the CalOils email, who's that go to?

1 A Oh. It goes to a multitude of people, including Josh, as
2 well as myself, I believe.

3 Q Who loads CalOils products on the trucks?

4 A The loaders are supposed to load the trucks.

5 Q Okay. You say supposed to. Was there ever a dispute
6 about that at some point?

7 A Yes, there was.

8 Q And can you tell us about that?

9 A Yes. Donna -- the loaders came to Donna and asked who
10 should be loading the trucks for CalOils. Donna came to me,
11 and I told Donna that the loaders are supposed to load the
12 trucks for CalOils.

13 Q How long ago was that?

14 A Oh, I believe that was -- that occurred in November of
15 2014, in the fall of 2014.

16 Q Are you familiar with the duties of Ms. Teuscher?

17 A Yes, I am.

18 Q Okay. What is her title?

19 A Her title is traffic coordinator.

20 Q You mean transportation coordinator?

21 A Transportation coordinator. Sorry.

22 Q Okay. And what does she do?

23 A She, essentially, is the travel agent for all non-CalOils
24 business.

25 Q Okay. And I think we established she sits in the same

1 office as Mr. Ennulat?

2 A Correct.

3 Q All right. And how does she perform her functions?

4 A Very similar to Josh, in that, she will contact shipping
5 companies, trucking companies, ensuring -- making, creating
6 dock appointment times, ensuring trucks come in on a schedule,
7 coordinator loaders to load those appropriate trucks at the
8 appropriate times and the appropriate docks.

9 Q Okay. What computer systems does she use?

10 A She uses SAP as well.

11 Q Does she use WM6?

12 A Yes.

13 Q Okay. Do you know how loaders are assigned to trucks?

14 A Yes. A truck will come in. It's usually first come first
15 serve. So any available loader will take the next available
16 truck to be loaded.

17 Q Okay. Do you know whether Ms. Teuscher talks to the
18 loaders about those assignments?

19 A Yes, she does.

20 Q Are you aware of situations where there are problems with
21 loads getting loaded?

22 A Yes.

23 Q Okay. Can you tell us about what some of those problems
24 might be?

25 A They could be anything from the product is not on the

1 floor and they can't load it. Or a trailer could be unfit for
2 service. Things of that nature.

3 Q All right. And who addresses those problems?

4 A Usually, Donna or the shipping clerk.

5 Q Okay. How would Ms. Teuscher address them?

6 A She could either redeck the load or contact the customer,
7 contact the carrier.

8 Q What about internally?

9 A She would talk to the loaders and come to a resolution.

10 Q Okay. Do you know how she talks to the loaders?

11 A They're usually face to face. They're in the office.

12 Q Loaders come to the office?

13 A Yeah. Yeah.

14 Q Which office is that?

15 A The shipping office.

16 Q Okay. How many times a day would you say those
17 interactions occur?

18 A Numerous.

19 Q And that's every day?

20 A Yeah, at least every day. Every day, several times a day.

21 Q Now are you familiar with the duties of Mr. Leo Garcia?

22 A Yes, I am.

23 Q And what is his title?

24 A Inventory controller.

25 Q All right. Do you know how long he's had that position?

1 A Not entirely sure. After the SAP implementation, he's
2 been doing it since oh, probably -- well, he never stopped, so
3 sometime in the summer.

4 Q Okay. Summer of 2014?

5 A Yes.

6 Q Now let me show you what I'm going to mark as I guess
7 Employer 5.

8 MR. TOPOLSKI: Is that where we are?

9 HEARING OFFICER MYERS: Yes.

10 **(Employer Exhibit Number 5 Marked for Identification)**

11 Q BY MR. TOPOLSKI: I'm showing you what's been marked as
12 Employer Exhibit 5. Can you identify that for me?

13 A This is a photograph of the new office area.

14 Q Which new office area? Does it have a name?

15 A Packaging office area we call it.

16 Q All right. It doesn't really have a formal name, correct?

17 A No, it does not.

18 Q People call it different things?

19 A Yeah.

20 Q Okay. Now where is this office located in relation to the
21 two offices in Employer Exhibit 1?

22 A On the other side of the building, on the northeast corner
23 of the building.

24 Q Okay. Now again, we've got certain DOTs in this building
25 -- I mean in this picture. Can you tell me who sits at DOT 1?

1 A DOT 1 is currently vacant, used by the receiving clerk for
2 overflow purposes.

3 Q Okay. Can you tell me who sits in DOT 2?

4 A Our scheduler.

5 Q Okay. Now is -- was the scheduler part of the voting
6 unit?

7 A No, it was not.

8 Q All right. Who sits at DOT 3?

9 A DOT 3 is the receiving clerk.

10 Q Okay. And who sits at DOT 4?

11 A That's Leonardo Garcia's desk.

12 Q Now you mentioned earlier that that -- Mr. Garcia didn't
13 always sit there?

14 A That's correct.

15 Q And where did he sit before that?

16 A He sat back in the administrative office area.

17 Q Okay. Which was DOT 6 on Employer Exhibit 1, correct?

18 A Correct.

19 Q All right. Do you know who moved him DOT 6 on Exhibit 1
20 to this chair here?

21 A I do.

22 Q And who was that?

23 A Stephanie and I.

24 Q Do you know why that happened?

25 A Because it was better communication and easier for him to

1 conduct his duties.

2 Q Okay. Now what are his duties? What exactly is Mr.
3 Garcia responsible for?

4 A The inventory controller position is -- purpose is to
5 ensure inventory accuracy at the facility.

6 Q And how does he do that?

7 A Through a multitude of tasks, including closing out
8 process orders, adjusting inventory.

9 Q Let me stop you right there. What is a process order?

10 A A process order is an order that tells the production
11 workers to create X amount of product.

12 Q Okay. And how does he close that out?

13 A He closes it out in SAP.

14 Q I mean exactly how does he close it out in SAP?

15 A So he will look up that process order. Each process order
16 has a number. He'll look it up in the system, look at the
17 metrics against it, and close it out as fit.

18 Q Okay. And what else does Mr. Garcia do?

19 A He will make inventory adjustments to reflect the true
20 quantities out on the floor and in the system.

21 Q How does he make those inventory adjustments?

22 A He will go in and approve -- someone will make a request,
23 and he will go into SAP and make -- basically, approve the
24 request.

25 Q So he does it on the computer system?

1 A Yeah, exactly.

2 Q All right. Does he do anything else?

3 A Yes, he does other things as we see fit, as a supervisor,
4 but those two are his main tasks.

5 Q Now you're familiar -- let me ask you this. Are you
6 familiar in your day-to-day activities with how often Mr. --
7 how much time Mr. Garcia spends at this desk?

8 A Yes, correct.

9 Q And how would you -- what would you -- what period of time
10 would you estimate that to be?

11 A Probably 85 percent of his time is at his desk.

12 Q Does he need the assistance of anybody in the voting unit
13 to do his job?

14 A No, he does not.

15 Q In your experience, of the three individuals we're
16 speaking about, Mr. Ennulat, Ms. Teuscher, and Mr. Garcia, who
17 has the most daily contact with unit employees to help that
18 person perform their job?

19 A I would say Donna.

20 Q Who has the least?

21 A Like Josh or Leo.

22 Q Okay. Just a few more questions. Were you present at the
23 vote count?

24 A I was.

25 Q All right. So you're familiar how the room was set up?

1 A I was.

2 MR. TOPOLSKI: On 6 I think?

3 HEARING OFFICER MYERS: Yes.

4 **(Employer Exhibit Number 6 Marked for Identification)**

5 Q BY MR. TOPOLSKI: I'm showing you what's been marked as
6 Employer Exhibit 6. Can you identify that for me?

7 A That is the room where the vote was held and the ballot
8 was counted.

9 Q Okay. Now at the time the vote was conducted, were there
10 chairs there?

11 A No, they were not.

12 Q Okay. Can you tell me where the observer sat in relation
13 to this picture?

14 A The observer sat in that area where that desk is pictured,
15 close to that window.

16 Q Okay. And can you tell me where the voting booth was?

17 A The voting booth was where that white board is currently.

18 MR. CANTORE: By the window -- by the desk you're talking
19 the desk on the --

20 THE WITNESS: By the right window.

21 MR. CANTORE: The right window?

22 THE WITNESS: The right -- the window on the right side of
23 the window.

24 MR. TOPOLSKI: I'm going to give you a little bit better
25 picture here in just a minute.

1 HEARING OFFICER MYERS: I have a question. Were the
2 observers facing into the room?

3 THE WITNESS: Yes. Their backs were to that wall.

4 HEARING OFFICER MYERS: Okay, thank you.

5 THE WITNESS: Yeah.

6 Q BY MR. TOPOLSKI: I'm going to show you what's been marked
7 as Employer's Exhibit 7. Sir, can you tell me what that is?

8 A That's a photograph of the same room from a different
9 angle showing the door from the voting room to an outside
10 hallway.

11 Q Okay. And where does that hallway lead?

12 A That hallway leads to the production area.

13 Q Okay. I'm going to show Employer Exhibit 8, and I bet
14 everybody knows what's coming. Okay. And I'm going to show
15 you what's Employer's Exhibit 8, and ask you if you can
16 identify that for me.

17 A So that's a picture of the -- taken from the hallway
18 showing the door into the voting room.

19 Q Okay. Just so the record's clear that's the hallway that
20 leads to the door we talked about in Employer's Exhibit 7,
21 correct?

22 A Correct.

23 Q Now, the reason I had you testify about Exhibits 6, 7, and
24 8, who took those pictures?

25 A I did.

1 Q Okay. Now, did you measure the distance from Exhibit 8 to
2 the doorway?

3 A I did.

4 Q And how far was that?

5 A Approximately 50 feet.

6 Q Okay. Did you measure the distance from where the
7 observer sat to the doorway?

8 A I did.

9 Q And about how far was that?

10 A That was about ten to 15 feet.

11 Q Okay. And did you measure the distance between where the
12 observer sat and the -- where the voting booth was?

13 A I did.

14 Q And how far was that?

15 A It was about 15 feet.

16 MR. RIMBACH: Ms. Myers, I'd like to make a motion to
17 sequester any witnesses that are observing behind us.

18 HEARING OFFICER MYERS: Okay. What is the Employer's
19 position with respect to sequestration?

20 MR. TOPOLSKI: Well, my thought on that was when I made
21 that request at the last hearing, it's pretty clear that the
22 case manual says that these are non-adversarial proceedings
23 and, therefore, sequestration is not appropriate in this type
24 of hearing. That's what I was told.

25 HEARING OFFICER MYERS: And does the Petitioner have a

1 position with respect to --

2 MR. CANTORE: Yeah, they shouldn't be sequestered, and I
3 don't know why the Region is requesting the sequestration.

4 MR. RIMBCH: I'm requesting it just -- the testimony is
5 about -- you know, there might be witnesses testifying about
6 events that occurred during the election, testimony about the
7 actions of a board agent, or observers, or voters. And so, any
8 testimony that witnesses might give on the stand might, you
9 know, influence the testimony of the witnesses observing behind
10 us.

11 MR. TOPOLSKI: I think it's too late now that I almost
12 finished my first witness.

13 HEARING OFFICER MYERS: Yeah --

14 MR. CANTORE: I agree, it's too late.

15 HEARING OFFICER MYERS: -- I also -- I agree. Any --
16 generally, requests for sequestration should be made at the
17 start of the hearing, so it affects all the witnesses and
18 parties equally, and since many of these witnesses have already
19 been sitting in the room, I'm going to deny that request.

20 MR. TOPOLSKI: I have no further questions.

21 MR. CANTORE: Can I have about five minutes --

22 HEARING OFFICER MYERS: Yeah.

23 MR. CANTORE: -- before I cross?

24 HEARING OFFICER MYERS: Can we go off the record, please?

25 (Off the record at 9:40 a.m.)

1 HEARING OFFICER MYERS: Okay. Prior to --

2 MR. CANTORE: Or Petitioner 1.

3 MR. TOPOLSKI: Petitioner 1.

4 HEARING OFFICER MYERS: -- prior to cross-examination, I
5 need to receive the formal papers. So the formal papers marked
6 as Board Exhibit number 1 are now received.

7 **(Board Exhibit Number 1(a) through 1(c) Received into Evidence)**

8 HEARING OFFICER MYERS: And the Employer, you have given
9 us exhibit -- Employer Exhibit 6, 7, and 8. Are you requesting
10 to admit those into evidence?

11 MR. TOPOLSKI: I am, indeed.

12 HEARING OFFICER MYERS: Any objections.

13 MR. CANTORE: None, whatsoever.

14 HEARING OFFICER MYERS: Employer's Exhibits numbers 6, 7,
15 and 8 are received into evidence.

16 **(Employer's Exhibit Number 6, 7, and 8 Received into Evidence)**

17 HEARING OFFICER MYERS: Petitioner, do you have any cross-
18 examination --

19 MR. CANTORE: I do.

20 HEARING OFFICER MYERS: -- for this witness.

21 MR. CANTORE: The first question is I have in front of the
22 witness Petitioner's Exhibit 1 even though it says Ex 1 on the
23 top. I'm going to have this remarked as Petitioner's Exhibit
24 1.

25 HEARING OFFICER MYERS: Okay.

1 **(Petitioner Exhibit Number 1 Marked for Identification)**

2 **CROSS-EXAMINATION**

3 Q BY MR. CANTORE: And do you recognize that document?

4 A Yes, I do.

5 Q Okay.

6 MR. CANTORE: This is an exhibit from the first hearing,
7 so I'm going to just simply offer it into evidence.

8 MR. TOPOLSKI: No objection.

9 HEARING OFFICER MYERS: Petitioner Exhibit --

10 MR. TOPOLSKI: Pending relevancy, but no objection.

11 MR. CANTORE: Okay.

12 HEARING OFFICER MYERS: -- Petitioner Exhibit 1 is
13 received.

14 **(Petitioner Exhibit Number 1 Received into Evidence)**

15 Q BY MR. CANTORE: Can you tell me on Petitioner's Exhibit
16 1, where I might find Employer Exhibit 1?

17 A I think that's in 18.

18 Q Not in 11.

19 A No, not in 11.

20 Q Okay.

21 A I think that's an 18, but it's kind of faded.

22 Q By the way, how long have you been at the facility?

23 A Since June 2nd, 2014.

24 Q Okay. And you -- where did you come from before that?

25 A Before that I was in grad school.

1 Q And who do you report to?

2 A Currently, right now, I report to Bronson Guilbeau.

3 Q And who is -- what's his position?

4 A He is the -- currently the facility leader of Gainesville.

5 Q Do you have an office?

6 A I do.

7 Q Where is your office?

8 A Right near the administrative offices.

9 Q Is it pictured on Employer Exhibit 1.

10 A Yes.

11 Q Where is it?

12 A Again, not marked, but -- I mean right here, essentially.

13 HEARING OFFICER MYERS: Can you explain where you're
14 pointing for the record, please?

15 THE WITNESS: It would be diagonal from the shipping
16 office.

17 MR. TOPOLSKI: Well, do we want to handwrite a number in
18 there for the record?

19 MR. CANTORE: That would be great.

20 MR. TOPOLSKI: So what number -- what would be the next
21 number there?

22 UNIDENTIFIED SPEAKER: It would be 7.

23 THE WITNESS: It would be 7.

24 MR. TOPOLSKI: All right. Can you put a 7?

25 MR. CANTORE: And then show us where you put the 7 --

1 MR. TOPOLSKI: Exactly.

2 MR. CANTORE: -- so we can all mark our exhibits the same.

3 THE WITNESS: Right here.

4 MR. TOPOLSKI: I think I --

5 MR. CANTORE: There we go, 7.

6 MR. TOPOLSKI: -- okay. Let me look -- go it.

7 MR. CANTORE: Okay.

8 Q BY MR. CANTORE: And how much time do you spend in your
9 office?

10 A It depends upon the day really.

11 Q Half the time, three quarters of the time, 25 percent of
12 the time.

13 A Probably 25 percent of the time recently.

14 Q And a month ago, more time in the office, less time in the
15 office.

16 A Probably about the same.

17 Q Two months ago.

18 A Probably about the same.

19 Q Okay. So you've been spending about 25 percent in your
20 office for some time now.

21 A I would say so, yes.

22 Q Okay. Where do you spend the rest of your time?

23 A All over the facility.

24 Q All over the facility. Okay. Now, looking at Employer's
25 Exhibit 1, I'm looking at where you have written 2.

1 A Employer's exhibit.

2 Q Employer's Exhibit 1.

3 A Yes.

4 Q I'm looking where you wrote the number 2 -- or somebody

5 wrote the number 2. I don't see a door there.

6 A There is a door there.

7 Q There is a door there.

8 A Yes.

9 Q But I do see a door right to the left of the number 2. Is

10 that door there?

11 A Correct.

12 Q So there were actually two doors there.

13 A Yes.

14 Q One of which is not pictured --

15 A Yes.

16 Q -- on the diagram. Okay. Now, what's a reservation code?

17 A A reservation code.

18 Q Yeah.

19 A Why do you --

20 HEARING OFFICER MYERS: Please --

21 THE WITNESS: -- as in what --

22 Q BY MR. TOPOLSKI: Don't trucks have reservation codes?

23 A Yes. The 200 number you mean?

24 Q I don't know, you tell me. I don't work there.

25 A It's a 200 number --

1 Q Okay. And --

2 A -- I believe.

3 Q -- do certain trucks have reservation codes?

4 A Yes.

5 Q Can Donna change them?

6 A Yes, I believe so.

7 Q And how would she do that?

8 A I believe in SAP.

9 Q Isn't it a product code, a reservation code.

10 A A product code.

11 Q Yeah.

12 A I'm not sure what you mean by product code.

13 Q Okay. But Donna can change reservation codes as far as

14 you know.

15 A As far as I know, yes.

16 Q Okay. Are you sure about Donna being able to change

17 reservation codes as you are about the rest of your testimony

18 today?

19 A You're trying to get into the intricacies of her daily

20 duties. I don't know exactly the exact T codes she uses on a

21 day-to-day basis, no.

22 Q All right. By the way, what's a BPS?

23 A A BPS.

24 Q I think that's the acronym. Best practice or something.

25 A We don't use a BPS acronym at Cargill.

1 HEARING OFFICER MYERS: If you need --

2 Q BY MR. CANTORE: BB -- how about double B?

3 A BBS.

4 Q Yeah.

5 A It's a behavior based form that the employees fill out.

6 Q All employees.

7 A Yes.

8 Q Office and production.

9 A Yes.

10 Q Does Leo fill one out -- Leonardo?

11 A He's supposed to.

12 Q What about Josh? Does he fill out one?

13 A He's supposed to.

14 Q And Donna, does she fill out one?

15 A Yes.

16 Q Okay. Now, let me ask you a question --

17 A I fill one out as well.

18 Q -- okay. And you're out on the production floor; aren't

19 you a lot?

20 MR. TOPOLSKI: Yeah, indicate yes or no.

21 Q BY MR. CANTORE: You're shaking your head yes.

22 A Yes.

23 Q Could you say yes?

24 A Yes.

25 Q Okay. Is Donna ever out on the production floor?

- 1 A Occasionally, yes.
- 2 Q How occasionally? Once in a blue moon, twice a day for a
- 3 half hour, how often is she out there.
- 4 A She's not out there very often, no.
- 5 Q Okay. Now, the door number 2. You see that door, to the
- 6 administrative offices.
- 7 A Yes.
- 8 Q Is that ever locked.
- 9 A No.
- 10 Q Are the administrative offices ever locked?
- 11 A Yes.
- 12 Q Do you have keys to the locks?
- 13 A Yes.
- 14 Q Do you know who else has keys to the locks?
- 15 A Yeah, some. I don't know everyone who has keys to the
- 16 locks.
- 17 Q Does Leon or Leonardo have keys to the locks?
- 18 A I do not know.
- 19 Q Does Josh have a key to the locks?
- 20 A I believe so, yes.
- 21 Q How about Donna? Does Donna have keys to the locks?
- 22 A I believe so.
- 23 Q Okay. Now, does Josh ever work on a forklift?
- 24 A Does he ever?
- 25 Q Yeah.

- 1 A He is forklift certified.
- 2 Q Do you ever assign him to work on forklifts?
- 3 A Me, personally.
- 4 Q Yes.
- 5 A Not -- not really.
- 6 Q Do you ever ask him to work on forklifts, like on overtime
- 7 basis for something like that?
- 8 A Occasionally, yes.
- 9 Q Okay. And what about Leonardo.
- 10 A No.
- 11 Q Does he ever work on a forklift?
- 12 A I've never seen Leo on a forklift.
- 13 Q Really.
- 14 A Yes, really.
- 15 Q Are you out there in the area a lot.
- 16 A Yes, I am.
- 17 Q Where does Leo work?
- 18 A He works in the area I talked about previously.
- 19 Q CalOil.
- 20 A What?
- 21 Q CalOil, right?
- 22 A Leo.
- 23 Q Oh, no, no, he's back in production, correct?
- 24 A Yeah.
- 25 Q I'm sorry, I keep mixing them up. I'm sorry, that's my

1 fault.

2 A He's the one on the other side of the building. Where on
3 the building is Employer's -- Petitioner's Exhibit 1, where is
4 Employer's Exhibit -- one second here -- I got them all mixed
5 up here.

6 MR. TOPOLSKI: I think it's 5, Bob.

7 MR. CANTORE: -- I think it's 5 too, but --

8 MR. TOPOLSKI: Let me check.

9 Q BY MR. TOPOLSKI: -- yes, Employer's Exhibit 5.

10 A All right. Where is it?

11 Q Yeah. Is it --

12 A In relation to what?

13 Q -- is it -- does it have a little yellow dot with a number
14 over where it is approximately?

15 A On --

16 Q Petitioner's Exhibit 1.

17 A -- okay. Number 16.

18 Q Number 16. Now, who loads the CalOil?

19 A The loaders are supposed to load the trucks.

20 Q You told me who's supposed to load the trucks.

21 A Uh-huh.

22 Q My question was who actually does it?

23 A The loaders do.

24 Q And are you telling me that Josh never does?

25 A I did not say that.

1 Q Does he ever do that?

2 A He can.

3 Q How often does he do that?

4 A I think the last time he loaded a CalOils truck, I
5 believe, was probably one-and-a-half weeks ago.

6 Q Okay. When he's loading the CalOil trucks, is he there
7 with the other loaders?

8 A As in what do you mean?

9 Q Well, is the CalOil truck the only truck being loaded? Is
10 the CalOil stored somewhere so far apart from all the other
11 oils that he would never cross paths with another loader when
12 he's loading the CalOil, that's what I mean.

13 A There's only one CalOil truck being loaded, yes.

14 Q No other trucks could be loaded at the same time.

15 A Well, there's only one room for one truck and one dock.

16 Q There's only one dock for loading.

17 A No, that's not what I said.

18 Q And what did you say?

19 A I said that only one truck can be loaded in one dock at
20 one time.

21 Q I appreciate that. And how many docks are there?

22 A Numerous.

23 Q And how close to each other are each dock?

24 A Several feet.

25 Q So would it be fair to say if I'm loading a truck in dock

1 one, and you're loading a truck in dock two, chances are we'd
2 be seeing each other on a regular basis as we're going back and
3 forth with our forklifts?

4 A For several -- for a limited portion of your day.

5 Q Okay. How often would Donna be loading trucks?

6 A In her current job duties, she doesn't load trucks.

7 Q Is Donna forklift certified?

8 A I do not believe so.

9 Q Okay. So even if she wanted to load trucks, she couldn't
10 unless she were forklift certified.

11 A I could get her certified tomorrow, if need be.

12 Q I'm sure you could get me certified tomorrow too, but that
13 doesn't --

14 A No, you're not a Cargill employee, so I can't do that,
15 sorry.

16 Q Where did you go to graduate school?

17 A University of Iowa.

18 MR. CANTORE: I have no further questions.

19 MR. TOPOLSKI: Just a couple follow-up.

20 HEARING OFFICER MYERS: Yes.

21 **REDIRECT EXAMINATION**

22 Q BY MR. TOPOLSKI: Does Mr. Garcia need a forklift
23 certification to do his job?

24 A No, he does not.

25 Q Do you expect him to operate a forklift to do any part of

1 his job?

2 A No, I do not.

3 Q Were you aware that he was driving a forklift before the
4 question came up today?

5 A No, I was not. I've never seen him on a forklift. I've
6 asked him if he can drive a forklift, and he felt -- he told me
7 he felt uncomfortable driving a forklift.

8 Q Okay. Now, Mr. Ennulat, does he need a forklift
9 certification to perform his CalOils function?

10 A No, he does not.

11 Q If you were to replace Mr. Ennulat in the CalOils
12 position, would forklift certification be a requirement of the
13 position?

14 A No, it would not.

15 Q If you were to replace Mr. Garcia as -- in his position,
16 would forklift certification be a requirement of that position?

17 A No, it would not be.

18 MR. TOPOLSKI: No further questions.

19 HEARING OFFICER MYERS: Do you have any recross?

20 MR. CANTORE: No.

21 HEARING OFFICER MYERS: I have a few questions --

22 THE WITNESS: Yeah.

23 HEARING OFFICER MYERS: -- for you. You testified earlier
24 that Josh Ennulat works at his desk in the office 80 to 85
25 percent of the time.

1 THE WITNESS: Correct.

2 HEARING OFFICER MYERS: What does he do the remainder of
3 the time?

4 THE WITNESS: That would be various tasks, whether it's
5 counting inventory, any special task I could have him do. I
6 asked him to go get a sample for me one time, just this week.
7 So various tasks.

8 HEARING OFFICER MYERS: What kind of sample?

9 THE WITNESS: Oh, just like an empty box -- an empty box,
10 basically.

11 HEARING OFFICER MYERS: Okay.

12 THE WITNESS: Yeah.

13 HEARING OFFICER MYERS: Can you think of anything else he
14 would during that other time?

15 THE WITNESS: There is -- I'm trying to think. Any task
16 that I see fit. You know, grabbing samples, checking on
17 something, checking on orders or production, things of that
18 nature, stuff on the computer that's not necessarily related to
19 CalOils, I can have him do as well.

20 HEARING OFFICER MYERS: Okay. And you say counting
21 inventory is one of the other tasks that he does.

22 THE WITNESS: Yeah, pulling inventory from the computer.

23 HEARING OFFICER MYERS: From the computer.

24 THE WITNESS: Yeah.

25 HEARING OFFICER MYERS: Is that something that any of the

1 shipping or receiving employees would do?

2 THE WITNESS: Most people in that office should be able to
3 do that, yes.

4 HEARING OFFICER MYERS: Okay. And then the same question
5 for Leonardo Garcia. You testified that he's at his desk about
6 85 percent of his time. What does he do with the remainder of
7 his time?

8 THE WITNESS: Well, the remainder of his time would be
9 other things, going out checking production, talking to myself,
10 talking with the terminal as well. I'm trying to think of
11 everything that goes on in that facility on a day-to-day basis.
12 Talking with a supervisor. Yeah, things of that nature.

13 HEARING OFFICER MYERS: Okay. And are the three employees
14 we're talking about, Mr. Ennulat, Mr. Garcia, and Ms. Teuscher,
15 are -- how are they paid? Do you know that?

16 THE WITNESS: They're salary non-exempt.

17 HEARING OFFICER MYERS: And how are the shipping and
18 receiving employees paid?

19 THE WITNESS: They are -- the rest of their -- their
20 coworkers, you mean.

21 HEARING OFFICER MYERS: The people in -- the people who
22 are eligible to vote.

23 THE WITNESS: Yeah, they're salary non-exempt.

24 HEARING OFFICER MYERS: Okay. Are they in the same
25 payroll classification, the three employees we're talking

1 about, and the rest of the voting employees?

2 THE WITNESS: Classification as in -- we don't really have
3 classifications regarding pay.

4 HEARING OFFICER MYERS: Okay.

5 THE WITNESS: Like pay rate, you mean like --

6 HEARING OFFICER MYERS: Uh-huh.

7 THE WITNESS: -- 1, 2, 3, or 4.

8 HEARING OFFICER MYERS: Yes.

9 THE WITNESS: No, they all make different wages, but
10 there's no -- there are bands yes, but they're all in the same.

11 HEARING OFFICER MYERS: Okay. And what about the benefits
12 that the three employees we're talking about, Ms. Teuscher, and
13 Mr. Garcia, and Mr. Ennulat, do they receive different benefits
14 than the --

15 THE WITNESS: They receive --

16 HEARING OFFICER MYERS: -- employees eligible to vote.

17 THE WITNESS: -- they receive the exact same benefit.

18 Every employee in Cargill has the exact same benefits --

19 HEARING OFFICER MYERS: Okay.

20 THE WITNESS: -- whether it's me or my boss' boss.

21 HEARING OFFICER MYERS: Okay. What about dress code?

22 THE WITNESS: Dress code.

23 HEARING OFFICER MYERS: Uh-huh.

24 THE WITNESS: There are food safety requirements, so no
25 jewelry, earrings, that nature, steel toe shoes.

1 HEARING OFFICER MYERS: And do Mr. Ennulat, Mr. Garcia,
2 and Ms. Teuscher have the same dress code as the employees that
3 are eligible to vote?

4 THE WITNESS: They should, yes.

5 HEARING OFFICER MYERS: Okay. Okay. I don't think I have
6 any other questions for you at this time.

7 THE WITNESS: Yeah.

8 HEARING OFFICER MYERS: Any follow-up.

9 MR. TOPOLSKI: Unfortunately, just to make sure the
10 record's clear. I just have a couple of questions with respect
11 to something that Mr. Meade answered in respect to your
12 questions.

13 HEARING OFFICER MYERS: Yes, sir.

14 THE WITNESS: Okay.

15 **REDIRECT EXAMINATION (CONTINUED)**

16 Q BY MR. TOPOLSKI: You mentioned that Mr. Ennulat or Mr.
17 Garcia, I can't remember which, would go out and talk to the
18 terminal people, correct?

19 A Correct.

20 Q Can you show us on Petitioner's Exhibit 1, where the
21 terminal is and what it is, so that the hearing examiner can
22 have a good idea of what the physical plant is and does?

23 A So the terminal building is Exhibit number 14 here, and in
24 this area, these white tanks is all considered the terminal
25 area, as well as 5.

1 Q And that's number 3 when you say white tanks, correct?

2 A Yeah, 3, 4, 7, 6. That whole area is all the terminal
3 area.

4 Q All right. And at the risk of leading my witness here,
5 that's where the oil is actually made, correct, for lack of a
6 better word?

7 A Yeah, that's where it's --

8 Q Stored and made --

9 A -- stored and --

10 Q -- right.

11 A -- and, yeah, blended.

12 Q The people in the terminal section of the plant, were they
13 eligible to vote?

14 A No, they were not.

15 Q Okay. That's -- I just wanted to make sure it's clear.

16 HEARING OFFICER MYERS: Thank you.

17 MR. TOPOLSKI: No other questions, I'm sorry.

18 HEARING OFFICER MYERS: Any follow-up from the Petitioner.

19 MR. CANTORE: Actually, I do.

20 **RECROSS-EXAMINATION**

21 Q BY MR. CANTORE: That 15 percent of the time that Leo
22 spends not doing his computer stuff, where does he spend that
23 time?

24 A Whatever I told her. I don't want to contradict myself.
25 I'm not exactly sure, verbatim, what I said, word for word.

- 1 Q Well, why don't you tell me again?
- 2 HEARING OFFICER MYERS: It's okay to tell him again.
- 3 Q BY MR. CANTORE: We could contradict you, but I'm just --
- 4 I'm just trying to figure out --
- 5 A Well, I don't want to --
- 6 Q -- where I --
- 7 A -- perjure myself and say something and contradict myself.
- 8 That's why I'm a little unsure.
- 9 Q Well, where does he spend his time?
- 10 A He could spend his time anywhere within that facility.
- 11 Q Where does he spend most of his time, that 15 percent?
- 12 A At his --
- 13 Q That 15 percent, I'm talking about now. Where does he
- 14 spend most of that 15 percent of the time?
- 15 A -- it would be in the packaging area.
- 16 Q The packaging area on this building -- the map is around
- 17 the 18.
- 18 A Well, I see numerous numbers there on that packaging
- 19 building.
- 20 Q Between 18 and 10, and 11 and 10.
- 21 A 18, 11, and 10.
- 22 Q Okay. That's the big square there. That's the packaging
- 23 area; isn't it?
- 24 A That's more of the warehouse area.
- 25 Q That's the warehouse area. So where's the packaging area,

- 1 17 to 10, 12 to 10?
- 2 A Yes.
- 3 Q 8 to 10.
- 4 A Yeah.
- 5 Q And he's in 16, right? Leo's in 16.
- 6 A Correct.
- 7 Q And he spends -- when he's not in 16, he's spending most
8 of his time in that package area out there, correct?
- 9 A Yes.
- 10 Q Okay. Now, that was Leo. Now, we got to do Josh. Where
11 does Josh spend his 15 percent of the time that he's not on his
12 computer?
- 13 A The same areas.
- 14 Q The same areas. Not more over in the shipping area around
15 18 and 11.
- 16 A Can you repeat that?
- 17 Q Doesn't Josh spend most of his time over in the shipping
18 area by 18, 11, that side of the building?
- 19 A For that 15 percent you mean.
- 20 Q Yeah.
- 21 A Yes.
- 22 Q Okay. Now, how much time does Donna spend, in your
23 estimate, outside of the office?
- 24 A Maybe five percent.
- 25 Q That much. Where does she spend that five percent?

1 A It would be the same areas as Josh.

2 Q As Josh, not down -- not the same areas as Leo. What
3 would Donna be doing out in there that five percent of the
4 time?

5 A Talking with the loaders.

6 Q Okay. What does -- what does Josh do that 15 percent of
7 the time out there?

8 A Special requests. Again, checking on paperwork,
9 production, inventory.

10 Q Talking to the loaders.

11 A Could be, yes.

12 Q Okay.

13 A Talking with me.

14 Q Talking with you. Talking with -- you spell it Jaime, but
15 I think it's pronounced something differently.

16 MR. TOPOLSKI: Haime (sic throughout).

17 MR. CANTORE: Haime.

18 THE WITNESS: Haime.

19 Q BY MR. TOPOLSKI: Talking with Jaime.

20 A Well, I don't know if the talks to Jaime very often. I
21 don't know.

22 Q Okay.

23 MR. CANTORE: I have nothing further.

24 HEARING OFFICER MYERS: Okay. I'm sorry, I have one more
25 question.

1 THE WITNESS: Yeah.

2 HEARING OFFICER MYERS: I just want to make sure the
3 record is complete. We don't want to end up --

4 THE WITNESS: Yeah.

5 HEARING OFFICER MYERS: -- back here again. Do the
6 packaging, shipping, and receiving employees use the SAP
7 system?

8 THE WITNESS: Indirectly, yes.

9 HEARING OFFICER MYERS: Can you explain how it --

10 THE WITNESS: Well, so some tasks are clerical, and they
11 will be using SAP the vast majority of their times. A machine
12 operator will be operating the machine the vast majority of
13 their time with a little bit of issuing material and SAP or
14 WM6, a very, very small portion of their time.

15 HEARING OFFICER MYERS: And when you they would be using
16 the SAP a majority of their time, who were you referring to?

17 THE WITNESS: The machine operators. More mainly in
18 production.

19 HEARING OFFICER MYERS: Okay.

20 THE WITNESS: Yeah.

21 HEARING OFFICER MYERS: And do they -- packaging, shipping
22 or receiving employees use the WM6 system.

23 THE WITNESS: Yes.

24 HEARING OFFICER MYERS: And how would they use that?

25 THE WITNESS: So that's -- they ship -- that's mainly what

1 shipping uses, is WM6. They use SAP -- they use them in
2 tandem.

3 HEARING OFFICER MYERS: Uh-huh.

4 THE WITNESS: So for finished goods shipping, the loaders
5 would mainly use WM6. Josh, the clerical position would be
6 using SAP more so than WM6, but using both systems. Again, a
7 machine operator would be using more WM6, not SAP. Does that
8 kind of give you an idea? So each person is going to use the
9 computer system in a different way, in a different amount of
10 time.

11 HEARING OFFICER MYERS: Okay.

12 THE WITNESS: Yeah, I mean -- so when you say everyone,
13 it's hard to give you a concrete answer.

14 HEARING OFFICER MYERS: Understood. Okay. I think those
15 are all the questions I have. Did that bring up an follow-up
16 for the Petitioner --

17 MR. CANTORE: Nothing further.

18 HEARING OFFICER MYERS: -- or the Employer.

19 MR. TOPOLSKI: Nothing further.

20 HEARING OFFICER MYERS: Okay.

21 MR. CANTORE: I think we've beaten that dead horse to
22 death.

23 HEARING OFFICER MYERS: We have. The witness is excused.
24 Thank you very much.

25 THE WITNESS: Thank you.

1 MR. TOPOLSKI: Can we have five minutes?

2 HEARING OFFICER MYERS: Yes. Off the record, please.

3 (Off the record at 10:11 a.m.)

4 MR. TOPOLSKI: Are we ready?

5 HEARING OFFICER MYERS: We're ready. The Employer may
6 call your next witness.

7 MR. TOPOLSKI: Donna Teuscher, please.

8 HEARING OFFICER MYERS: Please raise your right hand.
9 Whereupon,

10 **DONNA TEUSCHER**

11 having been duly sworn, was called as a witness herein and was
12 examined and testified as follows:

13 HEARING OFFICER MYERS: Thank you. Please have a seat.
14 And will you please state your name and spell it for the
15 record.

16 THE WITNESS: Donna Teuscher, D-O-N-N-A T-E-U-S-C-H-E-R.

17 HEARING OFFICER MYERS: You may proceed with questioning.

18 MR. TOPOLSKI: Okay. Thank you.

19 **DIRECT EXAMINATION**

20 Q BY MR. TOPOLSKI: Good morning, Ms. Teuscher, how are you
21 today?

22 A Just fine. Good morning.

23 Q Excited to be here.

24 A Oh, yeah.

25 Q I'm sure you are. You stated your name and spelled it for

1 the record. Can you -- you -- obviously, you work for Cargill,
2 and you work at the Fullerton facility, correct?

3 A Correct.

4 Q And you were eligible to vote in the election, and they
5 challenged your ballot, right?

6 A Correct.

7 Q Okay. What is your title?

8 A Transportation coordinator.

9 Q Okay. And how long have you had that position?

10 A I've had that about 15 years.

11 Q Okay. All right. Now --

12 MR. TOPOLSKI: -- where were the exhibits that were in
13 front of the witness? Mr. Meade has absconded with the
14 exhibits.

15 MR. MEADE: I thought they were mine to keep.

16 MR. TOPOLSKI: I'm going to put them in front of you again
17 and rectify this situation.

18 THE WITNESS: Okay.

19 MR. TOPOLSKI: These are the exhibits that we had earlier.

20 Q BY MR. TOPOLSKI: I'm going to ask you to take a look at
21 Employer's Exhibit 2. Do you see that? That would be it.
22 They're labeled in the lower right hand corner where your hand
23 is.

24 A Okay.

25 Q That would be --

1 A 1.

2 Q -- Employer's Exhibit 2. That's this one here. You've
3 got it in front of you.

4 A That's 2 -- okay.

5 Q You see -- my handwriting isn't the best --

6 A Uh-huh.

7 Q -- but then, again, the nuns did their best with me. Can
8 you tell me what that depicts?

9 A Yes, this is the new shipping office.

10 Q Okay. And there was some testimony earlier about who sat
11 where, correct?

12 A That is correct.

13 Q Where is your chair?

14 A I am in 2.

15 Q Okay. And who sits in 3, again?

16 A Raymond Ramirez.

17 Q And who sits in 4.

18 A Josh Ennulat.

19 Q Okay. Now, I want you to take a look at Employer's
20 Exhibit 3. And can you tell me what that is?

21 A That is a picture, again, of the shipping office. This is
22 the -- the white -- our whiteout board where we post all the
23 loads.

24 Q Okay. Now, is there something called a load sheet?

25 A Yes, we have a load sheet and -- it's a combination load

1 sheet and inspection sheet.

2 Q Okay. And where are they located?

3 A Once we take the information from the driver, we enter it
4 into the computer, and then we post it on this board and that's
5 where the loaders come in and take them, one load at a time.

6 Q Okay. Now, who are the loaders?

7 A We have several loaders. We have Oscar Romos, we have
8 Albert, we have Tim, we -- Albert, Oscar, Tim -- oh, and we
9 have two different Mikes. So we have a total of five loaders.

10 Q Okay. And are they the people who come in and pick up
11 their loads on this board every day?

12 A That's correct.

13 Q And how often, do you interact with them?

14 A Daily.

15 Q Okay. Multiple times a day.

16 A Oh, yes, multiple times a day.

17 Q Okay. All right. If you could, from a horse's mouth --

18 A Okay.

19 Q -- tell us what you do every day?

20 A Basically, every day I deal with the drivers that are
21 coming into the window, I check in trucks, I talk to lead
22 carriers.

23 Q Let me stop you right there. Could you look at Employer's
24 Exhibit 4 for me real fast?

25 A Okay.

- 1 Q And you see a window there.
- 2 A That's correct.
- 3 Q That's the window you're talking about.
- 4 A Yes.
- 5 Q And tell me how that window works.
- 6 A Okay. The drivers come up to that window when they check
- 7 in to say that they have arrived. We take down their
- 8 information, their DOT, their trailer license plate number --
- 9 Q Uh-huh.
- 10 A -- the load they're picking up, and from there -- and this
- 11 is all entered on the inspection sheet, and from there we enter
- 12 that information into the computer.
- 13 Q Okay. And then what happens after that?
- 14 A Then the load is allocated and a load sheet is printed
- 15 out, which tells what product that they will be picking.
- 16 Q Okay. And those are the load sheets and the --
- 17 A That's correct.
- 18 Q -- and I'm sorry, what was the other page?
- 19 A Inspection sheet.
- 20 Q Right. And then they're posted on the board.
- 21 A Yeah, then they're posted on the board with a seal for
- 22 that truck, yes.
- 23 Q Okay. And then who comes and picks those up again?
- 24 A The loaders will come in and pick those up.
- 25 Q And they come into this office that's depicted on Exhibit

1 2 and 3, correct?

2 A That's correct.

3 Q All right. Okay. All right. What else do you do during
4 the course of the day?

5 A I talk with the carriers, I talk with the CSRs, I schedule
6 the appointments and dock times for the trucks to come in. I
7 move trucks, I -- the loaders will bring me in things that if
8 we have a rejected truck I have to notify the carrier.

9 Q Tell me about that. How does that happen?

10 A A truck can come in and Cargill has high standards. If it
11 has a hole in it or -- we're food grade companies, so therefore
12 if there's an odor or bugs or anything in the trucks, the
13 loaders themselves will reject the truck, and they will come
14 into the office and left me know that the truck has been
15 rejected, so I have to notify the carrier, so they can send in
16 another truck for that load or reschedule the load.

17 Q So the loaders physically talk to you about problems they
18 see with these -- with those trucks.

19 A Yes.

20 Q Okay. What else do you do?

21 A Basically, a big part of mine is scheduling the dock times
22 for the trucks to come in and that's the major part of my day,
23 making sure that the trucks are flowing smoothly and as close
24 to on time as possible.

25 Q Okay. Now, what types of problems might you see with how

1 trucks are loaded and how do you deal with them, other than
2 what we just talked about, obviously?

3 A Oh, besides for rejected trucks, we have things like is
4 the product ready, is the truck going to make it's appointment
5 time. We have several customers that if the truck is more than
6 15 minutes late, they will reject it. So we have to make sure
7 that we get the loads out on time in order for them to arrive
8 at the customer on time.

9 Q Okay. And who do you talk with about all this?

10 A I'll let the loaders know that that truck has an eight --
11 say, an 8:00 delivery time and at 6:30 we need to get him out
12 of there. I'll discuss that with the loader and let him know.

13 Q And how do you discuss that with the loader?

14 A Face-to-face. They come in and out of the office.

15 Q Okay. Do you ever have occasion where you have to contact
16 the loader and get in touch with them?

17 A Yes, if there's a change to the order or if we need to
18 short an order or something, we have a PA system, and we also
19 have a radio that we can contact the loaders so they don't have
20 to always come directly into the office.

21 Q Do you use the PA system?

22 A I use the PA system and the radio.

23 Q How often?

24 A The PA system more than the radio. The shipping clerk
25 usually does most of the talk on the radio, but I do do it from

1 time to time. Mostly I'm using the PA system.

2 Q Is that a daily occurrence?

3 A Oh, yes.

4 Q Multiple times per day.

5 A Multiple times during the day.

6 Q All right. And every time you use the PA, what are you
7 using it for?

8 A It could be to call a loader in, could be to -- could be
9 I'm trying to reach somebody in the plant to find out if we
10 have product or for a load. And if I can't reach them on the
11 phone, because they're out in the plant, so I'll page them.

12 Q And what happens after you page them?

13 A Then they will turn around and call me from wherever
14 location they're at or when they get back in their office.

15 Q All right. Or else to come see you in person.

16 A Sometimes.

17 Q Now, you obviously have contact with other people you sit
18 with, correct?

19 A Oh, yes.

20 Q All right. How often and what types of contact do you
21 have with, say Ray Ramirez, who sits in item 3?

22 A Daily contact. I mean we're a small unit, so we all
23 communicate.

24 Q Okay. And what types of things would you talk to Mr.
25 Ramirez about?

1 A If we're having problems say shipping. The shipping clerk
2 or myself are having problems with a load for some reason,
3 we're trying to get a delivery number and the system won't
4 issue the delivery number out, he has -- he's a super user. He
5 has different ways of finding the number even though it's not
6 appearing on our screen.

7 Q Okay. Here we go again. You used the term super user.

8 A Uh-huh.

9 Q Now, you have tell the hearing examiner what that is, so
10 she'll know.

11 A Okay. We have a new -- we have a brand new system, and
12 when they put the system in, they sent -- there were chosen --

13 Q Well, let me stop you right there.

14 A -- okay.

15 Q The brand new system is the SAP system, correct?

16 A The SAP system, yes.

17 Q Okay. I'm sorry.

18 A And so what they did was they overly trained certain
19 employees in certain areas so that if you have a problem they
20 didn't have to train everybody if you have a problem. That
21 super user can solve your problem for you.

22 Q Okay. Now you also sit in the same office I guess who
23 we're calling Josh, right?

24 A Correct.

25 Q All right. And do you interact with him on a daily basis?

1 A Yes, we talk.

2 Q Do you ever interact with him on a business basis?

3 A Yes, there's times. I do a report every morning where I
4 audit the bill of ladings going into the accounting office.

5 And if CalOil -- if I'm missing a CalOil's bill of lading I ask
6 him about it, yes.

7 Q Does a loader have to take one of the sheets off the board
8 to load a truck?

9 A Yes, definitely.

10 Q How often do you see Josh take one of those sheets off the
11 board to load a truck, your personal observation?

12 A My personal observation is not often. We have a full
13 staff of loaders so he does fill in if we're shorthanded.

14 Q When was the last time you saw him take a load sheet?

15 A Probably about a week and a half ago we had two loaders
16 out, one sick, one on vacation.

17 Q And before that?

18 A I didn't -- probably a month. I haven't -- I didn't
19 observe him taking a load sheet.

20 Q Okay. You sit with him every day, right?

21 A That's correct.

22 Q About how much time -- about how -- what percentage of his
23 day do you see him sitting at his desk?

24 A Probably 80 to 85 percent of the time.

25 Q How long does it take to load a truck using a load sheet?

1 A If it's a full truckload approximately an hour.

2 Q How often do you see him disappear for an hour or more
3 that's not lunch?

4 A Not often. I mean he has other duties in the warehouse.
5 So he's out in the warehouse doing the inventory and what have
6 you so not often.

7 Q Okay. Now you were the observer for the company during
8 the election that was held, correct?

9 A That is correct.

10 Q All right. And let me refer you to in Employer's Exhibit
11 6 and do you recognize that exhibit?

12 A Yes, that is the conference room where we had -- the
13 elections were held.

14 Q Okay. Now you see a table in that picture. Or first of
15 all the chairs, were they there?

16 A The chairs were not there, no.

17 Q Okay. And that white board, was that there?

18 A It was but it was pushed up against the wall.

19 Q Okay. Now where was the table on election day?

20 A The table on election day was moved over to your right in
21 front of that window. Basically we were sitting with the
22 window behind us.

23 Q Okay. And where was the voting booth?

24 A The voting booth was to the left of this white board.

25 Q Okay. All right. Now let me show you Employer Exhibit 7.

1 All right. Do you recognize that picture?

2 A Yes.

3 Q And tell me what that is?

4 A That again is that same room. You're viewing the window
5 and the door going out into the production area.

6 Q Okay. Now and again Employer Exhibit 8 can you take a
7 look at that? And what is that?

8 A That is the hallway going out of that office into the
9 production area.

10 Q Okay. Now when the room was set up for the vote --

11 A Yes.

12 Q -- all right -- about how far away were you sitting from
13 the door depicted in Exhibit 7?

14 A Oh, probably three to four foot. If you look at Exhibit 8
15 you can see how close that window is to the door.

16 Q Okay. Now how did the voters come in to vote on voting?
17 First of all how many voting times were there?

18 A There were two different voting times.

19 Q And one was early, one was late, correct?

20 A That's correct.

21 Q How many people voted during the early time?

22 A I don't know exactly but I would say probably the major
23 part of them voted in the early time.

24 Q Okay. And did they vote near the beginning of the time
25 when the polls opened or later?

1 A In the beginning when they first opened we had a pretty
2 good size group.

3 Q Okay. And when you say a pretty good size group was it --
4 was that a line or something?

5 A Yes --

6 Q And --

7 A -- they were actually lined up outside along the wall.

8 Q Depicted in which of these exhibits?

9 A Okay. If you look at Exhibit 8 --

10 Q Uh-huh.

11 A -- they were lined up from the door along behind the
12 window not in this walkway at all. They were off to the other
13 side.

14 Q Okay. Now as they came in to vote how did the actual
15 physical vote take place?

16 A They tend to come into the voting area one at a time.

17 Q Now let me stop you. When you say voting area you mean
18 the old --

19 A Into the actual office.

20 Q Right. And that's the old shipping office is what we --

21 A Right.

22 Q -- call it, right?

23 A Uh-huh.

24 Q Okay. So they came in from the hallway into that room one
25 at a time. So there were not multiple voters in the room,

1 correct?

2 A No, basically they came in one at a time. And as one
3 would leave another one would come in.

4 Q Okay. While you were sitting there as an observer did you
5 notice anything unusual that was going on while the polls were
6 open?

7 A Yes, there was quite a bit of noise going on outside of
8 the office. It was pretty loud. I had brought it to the
9 attention of the -- I think her name was Sylvia, the woman in
10 charge from the labor board that and she told me that it was
11 fine, no problem. I don't have any idea what they were saying.
12 It was in Spanish. They were talking in Spanish.

13 Q Do you speak Spanish?

14 A I do not speak Spanish.

15 Q Okay. All right. Anything else that you observed during
16 the polling area that you thought was unusual?

17 A No, it was pretty -- I mean like I said there was only one
18 person in the room at a time. So it was pretty straightforward
19 as far as that. Basically it -- like I say it was just pretty
20 noisy outside. They were gathering a -- quite a few. They
21 were laughing and talking and a lot of loud noises. That's why
22 I brought it to the attention of the board.

23 Q And did the Board Agents do anything about that noise?

24 A No, she told me it was fine.

25 Q Okay.

1 A So I just continued doing what I was doing.

2 Q What about communications between voters and the observers
3 at the table? Did you see any of that?

4 A Not too much. I mean there was one. We had one that we
5 had a couple of guys come through and once they voted as they
6 were walking out they'd turn around and gave the other observer
7 a thumbs up but not communication. The labor board did not
8 allow any communication whatsoever.

9 Q Okay.

10 A I mean if they started to talk to us or show us any type
11 of anything she would ask them to stop.

12 Q Okay. Now how many voters would you estimate came through
13 a door other than the door depicted in Employer's Exhibit 7?

14 A Maybe three to five. We had a couple come through the
15 front door and a couple through the other side door but --

16 Q And did they all come through in the first session or the
17 second session, the ones who did not line up in the hallway by
18 Exhibit 7 or Exhibit 8 actually.

19 A Actually there were some in each session.

20 Q Okay. When you were hearing these loud noises could you
21 estimate about how many people were in that hallway at the
22 time?

23 A Oh, there was probably 10 to 15 people out there waiting
24 to vote. They basically had sent over -- they had instructed
25 the employees before they started up the lines and stuff to

1 come over and vote.

2 Q Okay.

3 MR. TOPOLSKI: I don't have any further questions.

4 HEARING OFFICER MYERS: Any cross-examination?

5 MR. CANTORE: Yes, but I'd like to take a few minutes.

6 HEARING OFFICER MYERS: Can we go off the record?

7 (Off the record at 10:40 a.m.)

8 HEARING OFFICER MYERS: You may proceed with cross-
9 examination.

10 CROSS-EXAMINATION

11 Q BY MR. CANTORE: Ms. Teuscher, am I pronouncing that
12 correct?

13 A Teuscher.

14 Q Teuscher. Can I call you Donna? Thank you --

15 A Sure --

16 Q very much.

17 A -- much easier.

18 MR. TOPOLSKI: Objection.

19 Q BY MR. CANTORE: Thank you very much. I don't want to
20 butcher your last name. Donna, how many pairs of steel-tipped
21 boots do you own?

22 A Two.

23 Q How often do you bring them to work?

24 A I have them at work but I don't wear them in the office
25 area.

1 Q Okay. How often do you actually go out into the plant?

2 A Not often and a lot of times when I go out into the plant
3 we have an area that is marked off outside of the office that
4 as long as I stay in that area I don't have to have my steel
5 toes on.

6 Q Okay. And from time to time do you have to go to the
7 other side of the plant from where you are?

8 A From time to time.

9 Q Isn't it a fact that often times you'll take your car to
10 the other side of the plant --

11 A That is correct.

12 Q -- rather than walk through the plant?

13 A That is correct.

14 Q Okay.

15 A Mainly because I have arthritis in my knees so that to go
16 to the other side of the plant is a distance.

17 Q My wife has arthritis. I totally sympathize with you.

18 A Uh-huh.

19 Q Thank God I don't have it yet. So how much time do you
20 spend in the office do you estimate?

21 A I would say probably about 95 percent. Most of my time is
22 in the office.

23 Q Okay. Now the loaders --

24 A Yes.

25 Q -- do they report to you?

- 1 A No.
- 2 Q Who do they report to?
- 3 A The shipping lead is Raymond Ramirez.
- 4 Q Okay. And by the way, what time do you come in every
- 5 morning?
- 6 A 7 a.m.
- 7 Q What time does Josh get in there?
- 8 A Josh is in earlier than I am. I can't tell you exactly
- 9 what time but I know he's always there when I arrive in the
- 10 morning.
- 11 Q Okay. And these load sheets --
- 12 A Uh-huh.
- 13 Q -- who makes out the load sheets for CalOil?
- 14 A Josh does.
- 15 Q So if he makes out his own load sheets you wouldn't
- 16 necessarily see him pull one from the wall? He's got it.
- 17 A That is correct.
- 18 Q Yeah, there we go. Okay. Does -- and the load sheets are
- 19 prepared by Ray?
- 20 A No, that -- the load sheets can be prepared by any of us
- 21 actually, any of the four of us that are in the office.
- 22 Q Okay.
- 23 A We all take turns checking in trucks.
- 24 Q Can you fix iDoc failures?
- 25 A No, I cannot.

- 1 Q Can Josh?
- 2 A Yes.
- 3 Q Can Ray?
- 4 A Yes.
- 5 Q Okay. Do you fill out PBS forms?
- 6 A BBS.
- 7 Q BBS.
- 8 A BBS. Yes, I do.
- 9 Q How often?
- 10 A Monthly we have BBS forms.
- 11 Q Okay. Do you have keys to the offices?
- 12 A I have keys to our office, yes.
- 13 Q And the other administrative offices?
- 14 A That's basically all the same entry door that's locked.
- 15 Q Okay. Do you know if Josh has keys to the office?
- 16 A I do not know.
- 17 Q And how about the -- do you know whether Leonardo has
- 18 them?
- 19 A I believe Leo does, yes.
- 20 Q Okay. Have you ever seen Josh on a forklift?
- 21 A Yes.
- 22 Q Have you ever seen Leo on a forklift?
- 23 A Yes, Leo started in the shipping department and I have
- 24 seen him on a forklift.
- 25 Q Have you ever been on a forklift?

1 A I -- no, I am not certified. That was one thing they
2 decided that I wasn't going to do.

3 Q Good for you. Now what was the question the loaders had
4 about loading CalOil?

5 A At one time we were told that everything CalOil's -- Josh
6 would handle everything that was CalOil's. And the loaders
7 understood that that meant he would be the one loading the
8 CalOil's truck. So they came to me and they asked me are we or
9 are we not supposed to load the CalOils. And I said well I
10 don't know. So I went and I asked Darren you know what was the
11 instructions, tell me what to tell the guys.

12 Q Okay. And do you know whether Josh ceased totally loading
13 CalOil?

14 A I do not know. I have seen him load CalOil since then,
15 yes.

16 Q Okay. And do you know whether he was loading oil as
17 recently as this past Tuesday?

18 A I'm sorry.

19 Q Do you know whether he was loading oil on a -- with a
20 forklift as recently as this past Tuesday?

21 A Not that I observed.

22 Q Okay. Fair enough. But he does get in before you?

23 A He does get in before me, yes.

24 Q What's a CSR?

25 A Customer service representative.

- 1 Q So you deal with the carriers, the customer service --
- 2 A Customers --
- 3 Q -- representative --
- 4 A -- the customers, yes.
- 5 Q -- okay. Now you do -- you handle all transportation
- 6 don't you?
- 7 A Pretty much, yes. I am the transportation for our plant
- 8 now, yes.
- 9 Q And that's going out and coming in?
- 10 A Yes.
- 11 Q So you do the terminal side of transportation as well?
- 12 A Very little. That's mostly handled through the office in
- 13 Gainesville. If the main transportation -- if they are gone
- 14 for the day because they of course are on a different time they
- 15 will call me, yes.
- 16 Q Do Josh or Leo work with the terminal much?
- 17 A Leo might with his inventory control. I don't believe
- 18 that Josh does.
- 19 Q Can you reject a truck?
- 20 A Can I reject a truck?
- 21 Q Yes.
- 22 A I have, yes.
- 23 Q Are there certain types of trucks that you can't -- what
- 24 if there's an incomplete load? Can you reject the truck then?
- 25 A I'm sorry. What do you mean by --

1 Q Well the shipment isn't ready, completely ready. Can you
2 reject the truck or does Ray have to do that then?

3 A No, I can send the truck away, yes --

4 Q Okay.

5 A -- because I also have to notify the carrier that the
6 truck has been -- we don't have product for the truck.

7 Q Now there on your left is a aerial picture.

8 A That's an old one.

9 Q It's a very old one --

10 A Uh-huh.

11 Q -- and I apologize for it. Not my fault. You can blame
12 your lawyer.

13 MR. TOPOLSKI: I don't apologize for that. I think it
14 depicts the plant very well. Thank you.

15 Q BY MR. CANTORE: Can you tell me by the number where the
16 voting room was?

17 A Let's see. We're here. It would be 17.

18 Q 17?

19 A Uh-huh.

20 Q And where the shipping office is?

21 A That would be 18. Yeah, it would be 18. I think that's
22 what it says.

23 Q And where the production offices or the office where Leo
24 now sits?

25 A Would be 16.

1 Q 16. What's 11?

2 A 11, actually there is a room over there. Now that's
3 mostly all dock areas. 11, there is a like a room over there
4 that eventually be a maintenance shop I believe.

5 Q Okay. Now Employer Exhibit 8 --

6 A Okay.

7 Q -- the line that was formed --

8 A Uh-huh.

9 Q -- you said it didn't go down that corridor with the
10 yellow striping in it, correct?

11 A There were a few people there but most of them were along
12 the wall where the window is.

13 Q Continuing past whatever is blocking our view there or
14 then --

15 A Yes.

16 Q -- okay. So right up along the wall?

17 A Yeah.

18 Q And so they could look in through the window or was the --
19 were the blinds or something drawn that day?

20 A I believe the blinds were drawn that day.

21 Q Very good. Now you heard noise outside?

22 A Yes.

23 Q And as I recall your testimony it was all in Spanish but
24 loud?

25 A It was loud and it was in Spanish, yes.

- 1 Q And any -- do you understand any words in Spanish?
- 2 A Not -- no, very few words.
- 3 Q Come on now. (Spanish spoken).
- 4 A Oh (Spanish spoken). Or (Spanish spoken) little.
- 5 Q (Spanish spoken) there you go.
- 6 A But very very little Spanish.
- 7 Q (Spanish spoken).
- 8 A No.
- 9 Q Never heard anybody say (Spanish spoken)? Okay. You
- 10 didn't hear anybody going (Spanish spoken) on the line outside
- 11 that day?
- 12 A I -- all I know that it was very loud, very distracting.
- 13 I don't know what they were saying.
- 14 Q Okay.
- 15 A I have no idea what they were saying.
- 16 Q Very good. And you told somebody named Sylvia?
- 17 A Yeah, I believe that was the name. I'm not sure she was
- 18 in charge of the vote.
- 19 Q And she said nothing --
- 20 A It --
- 21 Q -- to worry about?
- 22 A -- it was fine. Yeah, don't --
- 23 Q Okay.
- 24 A -- worry about it.
- 25 Q Do you know whether Sylvia could speak Spanish?

- 1 A I believe so, yes.
- 2 Q Okay.
- 3 A She was Hispanic but whether or not -- I mean not
- 4 everybody --
- 5 Q Who is Spanish, Italian --
- 6 A -- speaks Spanish but I --
- 7 Q -- don't speak a word.
- 8 A -- but I believe she did.
- 9 Q Okay. Fair enough. Now how many voters gave the Union
- 10 observer thumbs up?
- 11 A Maybe two.
- 12 Q And explain to me exactly what happened as best as you can
- 13 recall?
- 14 A They finish -- okay. If you look at Exhibit 7 we were
- 15 sitting. The table was along that window --
- 16 Q Right.
- 17 A -- so they would come out of the booth and as they walked
- 18 past us to go to that door to exit they would just turn and
- 19 give the thumbs up.
- 20 Q Okay. And who did they give the thumbs up to?
- 21 A The other observer --
- 22 Q And who was --
- 23 A -- Israel.
- 24 Q -- the other observer?
- 25 A Israel.

1 Q Okay. Now in terms of seating how many people were seated
2 at the table in front of the window?

3 A Two.

4 Q Just you and Israel?

5 A Uh-huh.

6 Q Where was the board agent?

7 A Okay. If we look at -- okay. If you look at Exhibit 6
8 the table --

9 Q Okay. Hold on. I haven't found 6 yet.

10 A Okay.

11 Q Okay. There you go. Very good.

12 A That's a chair.

13 Q Got it.

14 A Okay. The table was in front of that window and along
15 that wall and they were sitting along the wall where the white
16 board is. So we were kind of like an L type thing.

17 Q Where was the -- they --

18 A And then to the left of them --

19 Q Was the voting booth.

20 A -- was the voting booth.

21 Q Got it. Well it would've been -- if they're sitting
22 facing us it would be to their right, correct?

23 A That's correct.

24 Q And it appears to be another window with blinds there.

25 Was that pretty much where the board agents --

1 A Yes, their table --

2 Q Okay.

3 A -- was along that wall.

4 Q Okay. And going back to Exhibit 7 who was sitting closest
5 to the door, you or Israel?

6 A I was.

7 Q Okay. And was the door opened or closed?

8 A Door was closed except for when --

9 Q A voter --

10 A -- they were coming --

11 Q -- came in.

12 A -- in and out.

13 Q Okay. Now were voters told they couldn't use any other
14 door?

15 A No --

16 Q Okay.

17 A -- not that I'm aware of.

18 HEARING OFFICER MYERS: Were you at the -- was there a
19 pre-election conference?

20 THE WITNESS: Yes.

21 HEARING OFFICER MYERS: Were you at that conference?

22 THE WITNESS: I was at that conference. There were three
23 doors that you could enter through. There was the door that
24 most of the people came through, this one. There was another
25 one at the far end of the building and one on the side near the

1 booth.

2 Q BY MR. CANTORE: Okay.

3 A All three doors were unlocked and could be used.

4 Q Okay. Other than the one or two voters you saw give the
5 thumbs up to Israel did you see any other thumbs up gestures
6 while you were there that day?

7 A Not that I remember, no.

8 Q Did you hear any other noises besides talking, yelling,
9 profanities?

10 A Yelling, but like I said I didn't know what was being said
11 so --

12 Q Okay.

13 MR. CANTORE: I have nothing further.

14 HEARING OFFICER MYERS: I have just a few questions for
15 you.

16 THE WITNESS: Okay.

17 MR. RIMBACH: I have a few questions.

18 HEARING OFFICER MYERS: Oh, go ahead.

19 MR. RIMBACH: So --

20 HEARING OFFICER MYERS: I'm sorry. I forgot to ask.

21 **CROSS-EXAMINATION**

22 Q BY MR. RIMBACH: So you stated that the door between the
23 polling area and where the voters were waiting in line was
24 closed?

25 A Yes.

1 Q So when it was closed could you hear anything that was
2 being said outside?

3 A Yes, because it was very loud. There was a large group
4 and it was very loud and boisterous.

5 Q Could you make out anything that they were saying?

6 A Not really because like I say a few things -- mostly
7 everything was in Spanish. They were speaking to one another.

8 Q Would a Spanish speaker inside the polling area be able to
9 understand anything that was being said outside?

10 A Oh, yes.

11 MR. TOPOLSKI: Objection.

12 THE WITNESS: It was loud enough that if you --

13 HEARING OFFICER MYERS: Oh, wait one second.

14 MR. TOPOLSKI: I'm sorry. I withdraw. Withdraw.

15 HEARING OFFICER MYERS: Okay.

16 THE WITNESS: If you understood Spanish it was loud enough
17 that you would know what was being said.

18 MR. RIMBACH: Okay.

19 Q BY MR. RIMBACH: But you yourself did not understand
20 anything?

21 A No.

22 Q Okay. Did you hear any of the employees waiting outside
23 speak English?

24 A Yes.

25 Q Could you understand what they were saying?

1 A Basically. Yes, basically they were just talking about
2 voting and what they you know how they were going to vote.

3 Q What exactly did they say?

4 A Well some of that -- they told them that they were for or
5 against the Union.

6 Q Were they just talking or yelling when you heard these
7 statements?

8 A They were more yelling. It was noisy and distracting.

9 MR. RIMBACH: I don't have any further questions.

10 HEARING OFFICER MYERS: Okay. Thank you. I do have a few
11 still.

12 THE WITNESS: Okay.

13 HEARING OFFICER MYERS: When it was noisy and you were
14 hearing people speak in Spanish and a few people speak in
15 English was that during the first voting session or the second?

16 THE WITNESS: First voting session.

17 HEARING OFFICER MYERS: Okay. And how long did that last
18 approximately, the loud noise?

19 THE WITNESS: Oh, they went on most of -- well I guess
20 what I should say is as the group dwindled down of course the
21 noise it got quieter out there as they came in one by one and
22 voted. But it went on pretty much I would say probably 15, 20
23 minutes.

24 HEARING OFFICER MYERS: Okay. And do you recall how long
25 that first voting session was?

1 THE WITNESS: I want to say two hours but it could've been
2 longer.

3 HEARING OFFICER MYERS: Okay. And you said when the
4 voters -- you said two voters gave the Union's observer a
5 thumbs up sign?

6 THE WITNESS: Uh-huh.

7 HEARING OFFICER MYERS: And when they gave the thumbs up
8 sign did the -- did either of those two voters say anything?

9 THE WITNESS: No.

10 HEARING OFFICER MYERS: And did the board agent respond --

11 THE WITNESS: No.

12 HEARING OFFICER MYERS: -- in any way to either?

13 THE WITNESS: No.

14 HEARING OFFICER MYERS: I'm sorry. The board agent
15 didn't. And did the Union observer respond in any way to
16 either of the voters who gave the thumbs up sign?

17 THE WITNESS: No.

18 HEARING OFFICER MYERS: Okay. Those are all the questions
19 I have.

20 MR. RIMBACH: Sorry. I just have one more question.

21 **CROSS-EXAMINATION (CONTINUED)**

22 Q BY MR. RIMBACH: Were the employees visible, the ones that
23 were waiting outside in line? Were they visible from inside
24 the polling area at all?

25 A No, because they had the blinds closed or the window that

1 was there. So you couldn't see in. I -- we couldn't. Well
2 our backs were to the window so we wouldn't be looking out.
3 But they could not see in.

4 Q And you said that you could hear statements that were
5 being made outside when the door was closed?

6 A When the door was closed, yes.

7 Q Thank you.

8 A Yeah.

9 HEARING OFFICER MYERS: Okay. Does the Employer have any
10 redirect?

11 MR. TOPOLSKI: No further questions.

12 HEARING OFFICER MYERS: And for the Petitioner?

13 **CROSS-EXAMINATION (CONTINUED)**

14 Q BY MR. CANTORE: I'd like you to search your memory a
15 little bit stronger than you have so far about the statements
16 in English you heard outside of the office. Could you be a
17 little more specific about what you heard?

18 A I basically don't remember exactly what was said.
19 Basically I know that they were -- it was a constant back and
20 forth about are you or aren't you going to vote. I mean this
21 was -- as the Union came in this was talk between the
22 employees. But I don't remember exactly what was said.

23 Q Was the talk among employees any different than it was the
24 week before the election?

25 A Most of these employees are on the other side of the

1 building so I really couldn't say. I didn't -- I wasn't around
2 them a lot to say whether or not this was any different than
3 what they were --

4 Q Okay.

5 A -- saying before.

6 Q Fair enough.

7 MR. CANTORE: I have nothing further.

8 MR. TOPOLSKI: Nothing.

9 HEARING OFFICER MYERS: No redirect? Okay. You're
10 excused. Thank you for your testimony. Are you ready to call
11 your next witness?

12 MR. TOPOLSKI: I am. I call Mr. Roman Smith.

13 HEARING OFFICER MYERS: Mr. Smith, please raise your right
14 hand.

15 Whereupon,

16 **ROMAN SMITH**

17 having been duly sworn, was called as a witness herein and was
18 examined and testified as follows:

19 HEARING OFFICER MYERS: Okay. Please sit down. Will you
20 please say and spell your name for the record?

21 THE WITNESS: Roman Smith, R-O-M-A-N S-M-I-T-H.

22 HEARING OFFICER MYERS: You may proceed with questioning.

23 MR. TOPOLSKI: Thank you. Thanks for coming this morning,
24 Mr. Smith. I appreciate it.

25 THE WITNESS: No problem.

1 MR. TOPOLSKI: I just want to let you know that Mr. Meade
2 and I were commenting on your shirt. We both like it.

3 THE WITNESS: Oh, thank you.

4 MR. TOPOLSKI: Have one very similar to it myself.

5 **DIRECT EXAMINATION**

6 Q BY MR. TOPOLSKI: Mr. Smith, let's get right to the point
7 of why you're here this morning. You attended certain
8 information sessions that the Employer gave to inform employees
9 about certain aspects of the Union, correct?

10 A Yes.

11 Q And at one of those presentations you got up and made a
12 comment about your experiences with the United Food and
13 Commercial Workers Union, correct?

14 A Yes.

15 Q Can you tell me what you said?

16 A I had a conversation with one of the Union reps and I told
17 them that you know we -- I worked for Albertson's. He said
18 that he represented -- he was working at the local that was
19 representing us. And I said that you know when we went on
20 strike you guys didn't support us. He said we were very small,
21 we couldn't afford to. And that's what I said in the meeting.

22 Q Okay. Now did anything happen after you made that comment
23 in the meeting?

24 A That -- the very next Sunday the rep showed up at my house
25 and asked me about --

- 1 Q Okay.
- 2 A -- what I said.
- 3 Q Let me stop you. Do you remember which rep it was?
- 4 A Yes.
- 5 Q Can -- he's -- you see him in the room here?
- 6 A Yes.
- 7 Q Can you point him out for us?
- 8 A Yes, it's Gilbert.
- 9 Q All right. Gilbert, Mr. Gilbert Davila?
- 10 A Yeah.
- 11 Q Okay. And he came to your house on the Sunday following
- 12 the meeting?
- 13 A Yeah.
- 14 Q Tell us what happened.
- 15 A He said that what I said wasn't true, that that's not what
- 16 happened. I said yeah, that's what happened. He said well you
- 17 said that you didn't get your job back. I said no, I didn't
- 18 get my job back because I had to go look for another job
- 19 because I couldn't afford to keep striking. And he said well I
- 20 know where your vote stands. So I probably won't show up at
- 21 your house again unless something like this happens again.
- 22 Q Did he say it won't happen if something like this happens
- 23 again?
- 24 A He didn't what would happen. He just said that you know I
- 25 won't have to show up at your house unless something like this

1 happens again.

2 Q Okay. Was that the first time he'd been to your house?

3 A No, it was the second time.

4 Q All right. Okay. Did you tell anybody about the second
5 visit to your house?

6 A Yes, when I went back to work I told coworkers that it was
7 weird. Somebody ratted me out to the Union instantly because
8 the guy was at my house the following Sunday.

9 MR. TOPOLSKI: No further questions.

10 HEARING OFFICER MYERS: Any cross-examination?

11 **CROSS-EXAMINATION**

12 Q BY MR. CANTORE: Roman, where do you work in the -- at
13 Cargill?

14 A I work at the oley line.

15 Q And what's your hourly rate there?

16 A I'm --

17 MR. TOPOLSKI: Objection. What's the relevance of this?

18 MR. CANTORE: I -- I'll connect it, Your Honor --

19 HEARING OFFICER MYERS: Okay.

20 MR. CANTORE: -- Madame Hearing Officer.

21 HEARING OFFICER MYERS: I'll let it.

22 Q BY MR. CANTORE: What's your hourly rate there?

23 THE WITNESS: Am I allowed to --

24 HEARING OFFICER MYERS: Yes, you are --

25 THE WITNESS: reveal my -- I make 47 a year which is I

1 don't know, 22 something, 23.

2 Q BY MR. CANTORE: About \$23 an hour?

3 A Yes.

4 Q Twenty-two, \$23 an hour? How long have you been working
5 as an oley operator?

6 A Like three or four months.

7 Q When did you get the job?

8 A I don't know the exact date but --

9 Q Before the election, right before the election?

10 A I -- well no way before the election, a couple of months
11 before the election.

12 Q Okay. Where you working before that?

13 A I was working in the terminal.

14 Q And how much were you making there?

15 A 18.90.

16 Q Okay. So you got about a \$5 raise when you moved to the
17 other side, correct?

18 A Yeah.

19 Q Now when did you work at Albertson's?

20 A Right out of high school like 2003 to somewhere in around
21 there.

22 Q Well would it be fair to say that you worked at
23 Albertson's from let's see August 13th, 2002? Does that sound
24 right?

25 A I don't remember the exact date.

- 1 Q When was your last day of work at Albertson's?
- 2 A I don't remember.
- 3 Q Does March 4th, 2003 sound right?
- 4 A I honestly don't remember.
- 5 Q When was the strike?
- 6 A It was -- really I don't remember. I wasn't really paying
7 attention.
- 8 Q What store did you work at?
- 9 A West Covina.
- 10 Q West Covina?
- 11 A Yeah.
- 12 Q What local were you with?
- 13 A Whoever represented them. I don't --
- 14 Q Were you in Local 324 or were you in Local 1428?
- 15 A I don't know. I was just paying the Union dues. I was
16 very young and wasn't really paying attention to it so --
- 17 Q What did -- was your job there?
- 18 A I started as a bag, bagging groceries and then I went to
19 graveyard and I was stocking.
- 20 Q And isn't it a fact that you quit Albertson's before the
21 strike?
- 22 A I don't remember.
- 23 Q You don't remember whether you quit before the strike or
24 after the strike?
- 25 A I think it was like right before maybe or right during,

1 right when it started.

2 Q Right before. You --

3 A I remember --

4 Q -- quit in --

5 A -- picketing.

6 Q You remember picketing?

7 A I remember picketing in West Covina with friends and also
8 in Pomona with my friend, yes.

9 Q Were your friends still working at Albertson's when you
10 were picketing?

11 A Yes.

12 Q Did you strike Albertson's or were you locked out?

13 A I don't remember. I remember just being on the strike.

14 Q Just remember picketing?

15 A Yeah.

16 Q And you don't remember whether you were still an employee
17 at the time or whether you had already quit?

18 A I don't remember.

19 Q Okay. Now what did you want the Union to do that it
20 didn't do for you?

21 A Nothing, I --

22 MR. TOPOLSKI: Objection.

23 HEARING OFFICER MYERS: What is --

24 THE WITNESS: All right.

25 HEARING OFFICER MYERS: -- the basis of your objection?

1 MR. TOPOLSKI: I don't understand the relevancy of this
2 line of questioning. It's --

3 HEARING OFFICER MYERS: Yeah.

4 MR. TOPOLSKI: -- it's more a matter of what happened at
5 his house with Mr. Davila than anything else.

6 HEARING OFFICER MYERS: What is the --

7 MR. CANTORE: As I understand --

8 HEARING OFFICER MYERS: -- relevancy?

9 MR. CANTORE: -- the witness's statement Mr. Davila came
10 and said it wasn't true and if you tell another lie I'll have
11 to come back and talk to you or words to that effect. And if
12 he's telling the -- if he told the lie at the meeting because
13 he wasn't even on strike and our records show that he's -- he
14 left work. His last day of work was March 4th, 2003. The
15 strike didn't start till October 3rd of that year some what is
16 it seven months later --

17 HEARING OFFICER MYERS: Uh-huh.

18 MR. CANTORE: -- I think it's very relevant that he gets
19 up in a meeting, lies to the people at the meeting and then
20 when the business, when the organizer comes to his house and
21 corrects his lie we're supposed to respond to that?

22 MR. TOPOLSKI: That's a nice speech. I move to strike all
23 of it. None of its evidence.

24 MR. CANTORE: Once again were you ever --

25 MR. TOPOLSKI: Wait a minute.

1 HEARING OFFICER MYERS: Wait.

2 MR. TOPOLSKI: I got a motion to strike pending.

3 HEARING OFFICER MYERS: I will --

4 MR. CANTORE: It's not evidence. Don't worry. I have the
5 evidence here.

6 HEARING OFFICER MYERS: -- I will grant the motion to
7 strike on the part where you're saying he was lying because
8 that's not in evidence and we don't know if that's the case.

9 MR. CANTORE: That's a lawyer talking. Lawyers talk all
10 the time.

11 Q BY MR. CANTORE: Let me ask you this. Did you ever have a
12 phone number 9095967063?

13 A That is still my house number, yes.

14 Q Did you ever live at 71320 Baseline Road, Laverne,
15 California?

16 A That's where I live, yeah.

17 Q Okay. Did you work at Albertson's location 6557 in West
18 Covina?

19 A If that's the address of the Albertson's store, yes.

20 Q Was your business agent Pete Zimmer?

21 A I don't know who that is.

22 Q Okay. Do you recall paying an initiation fee of \$100?

23 A I must've if I worked at Albertson's --

24 Q Okay.

25 A -- as part of the Union.

1 Q And you don't remember whether the original hire date was
2 August 13th of 2002 --

3 A I don't remember, no.

4 Q -- or if your termination date was March 4th of 2003?

5 A No, I don't remember.

6 Q Were you there about seven months?

7 A Probably, yeah.

8 Q Okay. Where'd you go after that?

9 A Where -- I worked for a consulting company.

10 Q Doing what?

11 A It was doing surveying work and drafting.

12 Q Okay. And where'd you go after that?

13 A After that I worked for --

14 Q How long did you work for the surveying company?

15 A A couple of years.

16 Q Okay. From when, around 2003 to 2004?

17 A I was actually working at the surveying company while I
18 was working at Albertson's and going to school.

19 Q Okay. Where were you going to school?

20 A I was just going to community college, Citrus.

21 Q Did you ever finish?

22 A No.

23 Q Okay. Now when Gilbert came to your house he did say if
24 you tell another story -- I hear another story like this I'll
25 have to come back and talk to you? Is that correct?

1 A He said that if this happens again he said I won't have to
2 come to your house unless something like this happens again.

3 Q And by something like this what did you understand him to
4 mean?

5 A Well I guess me speaking out against the Union.

6 Q Speaking out or telling lies?

7 A Well I wasn't lying.

8 Q Did he -- but he said you were lying didn't he?

9 A He said that everybody who striked go their jobs back and
10 I said that's not true. A lot of my friends who worked at
11 Albertson's did not get their jobs back because they had to go
12 work somewhere else because they could not afford to pay their
13 bills.

14 Q Anyone who wanted their jobs got them back didn't they?

15 A I --

16 MR. TOPOLSKI: Objection.

17 THE WITNESS: -- I don't know. I only know about my
18 friends --

19 HEARING OFFICER MYERS: Objection. Wait.

20 THE WITNESS: -- who left.

21 HEARING OFFICER MYERS: Don't answer that. What is the
22 basis of your objection?

23 MR. TOPOLSKI: Calls for pure speculation. How would he
24 possibly know that?

25 HEARING OFFICER MYERS: Do you know whether everyone -- do

1 you know how many people got their jobs back?

2 THE WITNESS: No, I don't know.

3 HEARING OFFICER MYERS: Sustained.

4 Q BY MR. CANTORE: Why didn't your friends get their jobs
5 back?

6 A Because they couldn't afford to strike any longer and they
7 had to look for other means of income.

8 Q So they didn't want their jobs back because they already
9 had other jobs, correct?

10 A Yeah, I guess so.

11 Q Okay.

12 A They found other jobs already, yeah.

13 Q Is that what you told the workers at the plant, they
14 didn't want their jobs back because they already had gotten
15 other jobs?

16 A Well I thought that was obvious because --

17 Q Okay. And how didn't the Union help them? Was that true?

18 A The Union what?

19 Q Help your friends. Weren't there strike benefits paid?

20 A That was the thing. They strike for a certain period of
21 time until Union kept cutting their income for striking till
22 they no longer could afford to strike and had to go look for
23 other jobs.

24 Q So when you said the Union did nothing for them that's
25 what you told the employees isn't it?

1 A No, I didn't say that.

2 Q What did you say to the employees?

3 A I mean obviously Union did something for them. I mean
4 they were striking for the Union. So at the beginning they
5 obviously were for the Union.

6 Q So what did you tell the people when the company showed
7 those videos of the strike and the horrible things that
8 happened to people during the strike and you got up and said
9 something what exactly did you say?

10 A I said that eventually it got -- their pay got cut so far
11 that they you know the obviously Union couldn't pay them,
12 could -- Union no longer could support them so they had to go
13 look for other jobs.

14 Q You'd said all that?

15 A Well I don't remember exactly but that's --

16 Q Didn't you say I was there and the Union did nothing for
17 us?

18 A I said I was there, yes.

19 Q And the Union did nothing for us?

20 A I did not say nothing. I mean obviously Union was doing
21 something for us or we wouldn't be striking.

22 Q I know. Obviously the Union would be doing it but that's
23 not what you said. I am just trying to find not what the Union
24 did or didn't do. I want to know what you told the people at
25 the meeting about the Union. And isn't it a fact you said --

1 MR. TOPOLSKI: Objection.

2 MR. CANTORE: -- one --

3 MR. TOPOLSKI: Let him --

4 MR. CANTORE: -- you were there --

5 MR. TOPOLSKI: -- answer one question before you ask
6 another.

7 MR. CANTORE: I'm asking the first question.

8 MR. TOPOLSKI: Objection.

9 HEARING OFFICER MYERS: What --

10 MR. TOPOLSKI: This question's on the --

11 HEARING OFFICER MYERS: Sustained.

12 MR. TOPOLSKI: -- table.

13 HEARING OFFICER MYERS: What do you recall saying at that
14 first meeting, at the meeting when the company showed the
15 videos that we're talking about?

16 THE WITNESS: Well --

17 HEARING OFFICER MYERS: To the best of your recollection
18 what did you say?

19 THE WITNESS: -- the person that was showing us the videos
20 were giving us examples of what could happen and I guess one of
21 the examples sounded like something familiar to what happened
22 to me. And I said well yeah, the -- that's true that we were
23 picketing and then the Union cut our pay by so much that we
24 could no longer do it. So it seemed like the Union didn't care
25 because they didn't -- weren't paying us.

1 Q BY MR. CANTORE: How much in strike benefits did you get
2 from the Union?

3 A Well according to you I guess nothing because I don't
4 remember --

5 Q I want to --

6 A -- because --

7 Q -- know what -- I don't know what you --

8 HEARING OFFICER MYERS: Do you --

9 MR. CANTORE: -- what I show. I want to know what you
10 remember receiving from the Union --

11 THE WITNESS: I don't --

12 MR. CANTORE: -- in strike benefits.

13 THE WITNESS: -- remember.

14 Q BY MR. CANTORE: You don't remember seeing anything?

15 A You might be right. I might not have been working there
16 any longer, but I do remember striking with my friends.

17 Q You mean you remember walking the picket line with your
18 friends?

19 A Walking the picket line, I guess -- does that mean
20 striking?

21 Q You went there with your friends, with the picket signs
22 and --

23 A Yeah.

24 Q -- asked customers not to shop there --

25 A Yes.

1 Q -- and things like that, and your friends were there and
2 things like that.

3 A Yes.

4 Q But you were no longer an employee, were you?

5 A Yes.

6 Q And you were no long -- Yes, you were still an employee or
7 no --

8 A No, I wasn't.

9 Q -- you were not.

10 Q I mean, if you've got my records obviously I wasn't the
11 employee, but I don't remember.

12 Q Okay. And so again, what was it that the Union didn't do
13 for even your friends that you told the memberships about?
14 They didn't do any -- you said they didn't do anything, right?

15 MR. TOPOLSKI: Objection. Asked and answered. I mean,
16 it's getting to the point of badgering the witness now.

17 HEARING OFFICER MYERS: I will let you answer this one
18 question and then let's move on to another topic.

19 MR. CANTORE: Okay.

20 THE WITNESS: I'm sorry. Could you repeat it again?

21 Q BY MR. CANTORE: Do you whether Local 324 paid out as much
22 as \$350 a week in strike benefits to striking members?

23 A I don't know that.

24 Q Do you know whether Local 324 had a food bank in which it
25 was giving out free food to its striking members?

1 A I don't know that.

2 Q Did you ever take advantage of striking -- of free food at
3 any of the locals involved in the strike lockout?

4 A No.

5 Q Okay. Do you know whether they were making loans to the
6 members to help them with people being evicted and losing their
7 homes?

8 A No, I didn't know --

9 Q You didn't know about that? Do you know whether Ralph's
10 was indicated for its conduct during the strike?

11 MR. TOPOLSKI: Objection.

12 HEARING OFFICER MYERS: What is the basis of your
13 objection?

14 MR. TOPOLSKI: Relevance. I mean --

15 HEARING OFFICER MYERS: Okay. What is the relevance of
16 whether or not Ralph's was indicted?

17 MR. CANTORE: The relevance is that the witness, I think,
18 lied, and -- because he got a \$5 raise from his employer.

19 MR. TOPOLSKI: That's argument -- he can make it a --

20 HEARING OFFICER MYERS: Objection is sustained.

21 MR. TOPOLSKI: -- brief.

22 MR. CANTORE: Okay.

23 Q BY MR. CANTORE: Who asked you to make the statement at
24 the meeting?

25 A No one.

1 Q Who did you tell to -- who asked you to come here today?

2 A The lawyer.

3 Q Are you here under subpoena?

4 A No.

5 Q Voluntarily?

6 HEARING OFFICER MYERS: Can you -- One second, please.

7 THE WITNESS: I'm sorry.

8 HEARING OFFICER MYERS: Can you please speak up?

9 THE WITNESS: Yeah.

10 HEARING OFFICER MYERS: And you can speak in to --

11 THE WITNESS: Okay.

12 HEARING OFFICER MYERS: There you go. Okay. I'm sorry.

13 Re-ask your question.

14 Q BY MR. CANTORE: Are you here pursuant to a subpoena?

15 A No.

16 MR. CANTORE: Nothing further.

17 HEARING OFFICER MYERS: Okay. For the Regional Director?

18 MR. RIMBACH: Nothing.

19 HEARING OFFICER MYERS: I have just a few questions for
20 you.

21 THE WITNESS: Okay.

22 HEARING OFFICER MYERS: When Mr. Gilbert Davila came to
23 your house, how long was he at your house?

24 THE WITNESS: Between 20 and 40 minutes.

25 HEARING OFFICER MYERS: Did he come into your house?

1 THE WITNESS: No, he did not.

2 HEARING OFFICER MYERS: Where did you talk to him?

3 THE WITNESS: Right outside my front door.

4 HEARING OFFICER MYERS: Okay. So he was there for 20
5 minutes and you gave some testimony about what he said. Do you
6 recall anything else that he said during that 20 minutes or so
7 that he was at your house?

8 THE WITNESS: He -- I told him that I didn't have a
9 problem with the company and I had no reason to vote yes, so he
10 tried to tell me not to vote at all.

11 HEARING OFFICER MYERS: And did you say anything -- do you
12 recall if you responded to that?

13 THE WITNESS: Yeah, I think I told him that I was going to
14 vote yes anyway, or I -- or maybe I told him I wasn't going to
15 vote. I -- I'm not sure.

16 HEARING OFFICER MYERS: Okay. And do you remember
17 anything else that the two of you discussed that day?

18 THE WITNESS: I mean it was a normal friendly
19 conversation. There wasn't -- we talked about food and other
20 stuff. And the union and what the union could do for me and
21 what, you know, the company -- just regular stuff I guess, him
22 trying to convince me to vote yes or.

23 HEARING OFFICER MYERS: Okay. And you went back to work
24 after that conversation?

25 THE WITNESS: Yes.

1 HEARING OFFICER MYERS: And how many people do you -- did
2 you tell people about that conversation?

3 THE WITNESS: Yes.

4 HEARING OFFICER MYERS: About how many people?

5 THE WITNESS: I don't remember; probably the four peop --
6 the three people I work with and then a few people in the
7 terminal that I used to work with.

8 HEARING OFFICER MYERS: Okay. And what is your job again?

9 THE WITNESS: I'm a oley technician.

10 HEARING OFFICER MYERS: And what do you do?

11 THE WITNESS: Just repairs and running the line, the new
12 line that they just installed.

13 HEARING OFFICER MYERS: What kind of line?

14 THE WITNESS: It's a -- we blow and fill the bottles right
15 there inside the warehouse.

16 MR. TOPOLSKI: For the record, just to help you clarify.

17 HEARING OFFICER MYERS: Thank you.

18 MR. TOPOLSKI: It's a proprietary line. It's relatively
19 new. It has some technology that's very sensitive. The long
20 and short of it is; it requires a bit higher degree of skill
21 then some of the other lines that are run.

22 HEARING OFFICER MYERS: Okay.

23 MR. TOPOLSKI: Is that fair?

24 THE WITNESS: Yeah.

25 HEARING OFFICER MYERS: Okay. I have no further questions

1 for you. Did any of my questions raise anything else on --

2 MR. TOPOLSKI: Not for me.

3 Q BY MR. CANTORE: Who are the three people you work with
4 who you told?

5 A James, Tiari, and Nick. I'm not sure about their last
6 names.

7 Q Are they operators? Are any of them lead persons or?

8 A No, they're all the same job titles as me.

9 Q Did you tell any lead persons about the conversation with
10 Gilbert -- the second conversation?

11 A I don't think so.

12 Q Any supervisors? You tell any supervisors?

13 A No.

14 Q Well, how'd the company come to learn about your
15 conversation with Gilbert?

16 A I don't know. Maybe -- people talk -- I --

17 Q Who was the first person in management who approached you
18 about your conversation with Gilbert?

19 A I don't remember. I just remember speaking to one of the
20 lawyers.

21 Q That's the first person you spoke to, was one of the
22 lawyers?

23 A No, I mean, I -- wasn't hiding it. I was -- tell anyone
24 could have known about it. I've talked to other co-workers.

25 MR. CANTORE: Nothing further.

1 HEARING OFFICER MYERS: For the Regional Director?

2 MR. RIMBACH: No questions.

3 HEARING OFFICER MYERS: Okay. You may be excused. Thank
4 you very much for your testimony.

5 Do you have another witness?

6 MR. TOPOLSKI: I've got one more witness. Yes.

7 HEARING OFFICER MYERS: Okay. Do you -- are you prepared
8 to call your witness now?

9 MR. TOPOLSKI: Does anybody need a five-minute break, or
10 do you just want to get -- this is going to be short ones.

11 MR. CANTORE: No, I don't need a break.

12 MR. TOPOLSKI: All right. Okay. Mr. Sedano, you're up.

13 HEARING OFFICER MYERS: Can we go off the record for one
14 moment, please?

15 (Off the record at 11:26 a.m.)

16 HEARING OFFICER MYERS: Okay. On the record. Will you
17 please raise your right hand?

18 Whereupon,

19 **JAIME SEDANO**

20 having been duly sworn, was called as a witness herein and was
21 examined and testified as follows:

22 HEARING OFFICER MYERS: Please sit down.

23 THE WITNESS: Thank you.

24 HEARING OFFICER MYERS: And please say and spell your name
25 for the record.

1 THE WITNESS: First name, Jaime Sedano -- J-A-I-M-E, last
2 name, Sedano, S-E-D-A-N-O.

3 **DIRECT EXAMINATION**

4 Q BY MR. TOPOLSKI: Okay. Mr. Sedano, thank you for coming
5 this morning.

6 A No problem.

7 Q I appreciate your time. What's your title at the company?

8 A First shift packaging lead.

9 Q Okay. And how have you had that position? Roughly.

10 A Almost over 19 years.

11 Q Okay. Long time?

12 A Yes.

13 Q Okay. And as the first shift packaging lead you were
14 eligible to vote in the election --

15 A Yes.

16 Q -- correct? All right. And did you in fact vote in the
17 election?

18 A Yes.

19 Q And there were two sessions, correct?

20 A I just know I was -- when you say sessions --

21 Q Two sessions of voting, one in the morning, one in the
22 afternoon.

23 A I was in the morning, so I don't know how many sessions.

24 Q Okay. So you voted in the morning session --

25 A Yes.

1 Q -- correct? And did you get there before the polls opened
2 up?

3 A I get there at five in the mornings. I don't know what
4 time the polls opened.

5 Q Okay. Did you wait in line to vote?

6 A Yes.

7 Q Okay. And where were you in the line, near the front, in
8 the middle, near the back?

9 A I was probably -- there was probably five/seven employees
10 in front of me.

11 Q Okay. All right. And did you see Mr. Ed Mulvey walk out
12 when he was finished voting?

13 A Yes.

14 Q And was there a reaction when he walked out?

15 A Yes.

16 Q And what was that reaction?

17 A Boo.

18 Q Okay. Did you hear other people chanting things while you
19 were in line?

20 A Yes.

21 Q And what were they chanting?

22 A (Spanish spoken).

23 Q And what does that mean for those of us who are --

24 A Yes, we can.

25 Q Okay. Anything else they were chanting?

1 A Mexican bad words. A lot of bad words were said.

2 Q Okay. One more thing. You're the shipping lead, correct?

3 A No, packaging lead.

4 Q Packaging lead. I'm sorry. Do you watch the loaders
5 every day?

6 A I'm going to say probably, maybe twice a week, because I
7 do go to the shipping office.

8 Q All right.

9 A Or warehouse area.

10 Q Where do you spend most of your time as the packaging
11 lead?

12 A Packaging Department.

13 Q Okay. In the past year how many times have you seen Josh
14 on a forklift?

15 A I haven't seen Josh on a forklift in a while. I see him
16 on the bike, when he comes from --

17 Q Did he load trucks with the bike?

18 A No. But he comes from shipping to packaging on the bike.

19 MR. TOPOLSKI: No further questions.

20 HEARING OFFICER MYERS: Any cross-examination?

21 MR. CANTORE: A couple of questions. Yes.

22 **CROSS-EXAMINATION**

23 Q BY MR. CANTORE: Why would he go by bike, is it a long
24 area, a long building?

25 A I'm assuming, yes -- we use bikes because it's -- from one

1 department to the other department it's a pretty -- distance.

2 Q Couple of football fields?

3 A Yes.

4 Q Okay. When was the last time, didn't Josh work for you
5 two weeks ago on a forklift?

6 A It was probably one time in the last year, one time.

7 Probably I want to say a month and a half ago. Once.

8 Q I'm talking about two weeks ago.

9 A No.

10 Q You don't remember two weeks --

11 A No, I don't remember two weeks. Probably over a month.

12 Yes.

13 Q Okay. Do you know all the guys in the shop pretty much?

14 A When you say shop, what shop?

15 Q The plant. Do you know all the voters? Let me put it
16 that way.

17 A Yes, pretty much I work with everybody. Yes.

18 Q Okay. Who booed at --

19 A I'm not going to say names.

20 Q Madam Hearing Officer, would you please instruct the
21 witness to answer the question.

22 HEARING OFFICER MYERS: Yeah, I would like to know the
23 answer to that question.

24 THE WITNESS: I got a problem saying names. There was
25 Tony, Valo, Gerardo, same problem.

1 Q BY MR. CANTORE: And they all booed him?

2 A Most of the guys booed him. Probably if there were 15 on
3 the line, I'm going to say probably at least a good solid
4 eight, but I wasn't really sure -- who booed him, I just know
5 kind of who was behind me.

6 Q Okay. Was he only one who booed? Was booed?

7 A Yes. That I know, because there was probably, like I
8 said, seven in line, so it was in front of me, so -- when he
9 came out there was probably more the next ones to vote, and
10 then the ones that came out just left.

11 Q Do you know why he was booed?

12 A No.

13 Q Did he win the Super Bowl or something the day before so
14 that, you know, they were mad that he took all their money or
15 something?

16 A If you want me to guess I can guess why he was booed.

17 Q I don't want you to guess.

18 A It's a guess, but I don't want to guess.

19 Q You don't know. But you don't know. Do you know how he
20 voted once he went in there?

21 A I know which way he was going to vote. Yes.

22 Q How did you do that?

23 A Because we talk. Most of -- most everybody knew where we
24 going -- voting because we talk among of us, and we knew it was
25 very, very (Spanish spoken) one vote could make the difference.

1 MR. CANTORE: I have nothing further.

2 HEARING OFFICER MYERS: For the Regional Director?

3 MR. RIMBACH: No questions.

4 HEARING OFFICER MYERS: Who -- what is Ed Mulvey's job
5 title?

6 THE WITNESS: He's the -- his title is de-palletizer
7 operator. He basically feeds raw material into a line.

8 Q BY MR. CANTORE: Okay. And so he -- the -- he was booed
9 after he voted?

10 A Yes.

11 Q In the hallway?

12 A Yes.

13 Q And did anyone say anything to him? Anyone waiting in
14 line?

15 A He was booed and comments -- I don't know exactly what
16 kind of com -- they were talking to him as he was coming out.

17 HEARING OFFICER MYERS: Do you recall if Ed said anything
18 to them?

19 THE WITNESS: No, he just kind of smiled.

20 HEARING OFFICER MYERS: He -- I'm sorry. Can you repeat
21 that?

22 THE WITNESS: Kind of smiled.

23 HEARING OFFICER MYERS: Okay.

24 THE WITNESS: Just -- embarrass -- I don't know what
25 reaction.

1 HEARING OFFICER MYERS: Okay. No further questions. Any
2 redirect?

3 MR. TOPOLSKI: Yeah, just a couple of more things.

4 **REDIRECT EXAMINATION**

5 Q BY MR. TOPOLSKI: In your discussions with him, which way
6 was he going to vote?

7 A He was going to vote no.

8 Q The people who booed, your discussions with them; which
9 way were they going to vote?

10 A Yes.

11 MR. TOPOLSKI: No further questions.

12 **RECROSS-EXAMINATION**

13 Q BY MR. CANTORE: Any other no voters in line?

14 A Yes, me.

15 Q Any others?

16 A Yes, couple.

17 Q And were they laughing with the yes voters?

18 A No.

19 Q Weren't they all making noise outside?

20 A Most of them, the ones that are going to vote -- yes.

21 Which I knew was ones where they are. It was not a secret who
22 was going to vote yes, who was going to be no. That's why we
23 knew it was very -- one vote could make the difference.

24 Q And who was making noise? Everyone?

25 A Not every single person that was there. It was probably

1 just the main -- it was probably like eight -- eight solid
2 ones.

3 Q How many people were in the line when you voted?

4 A Probably like 15.

5 Q And by the time Ed voted, were all 15 left in line?

6 A No, there were people still coming from different
7 departments and get in line.

8 Q So it was a constant 15, but just --

9 A I don't know. I don't know. I didn't count them one,
10 two, three; I didn't count them. I just know when I came out
11 there was still a line and I just mind my own business and went
12 back.

13 Q Where were you in line when Ed came out? You were first
14 in line, last in line --

15 A No.

16 Q -- third in line?

17 A I was -- like I said, when I got there, there was probably
18 five to seven in front of me and it was one of the ones that
19 was in front of me our of those five/seven employees.

20 Q And where was Ed?

21 A What do you mean? He was in front of me.

22 Q Two in front, three in front, four in front?

23 A Oh, I don't know. Couple. I don't know. Just in front
24 of me.

25 Q So when you -- when Ed came out, you were pretty close to

1 the door?

2 A Yes. Probably like, like I said, probably from the door
3 where I was, probably ten feet.

4 Q How many people in front of you?

5 A Like I said, five --

6 Q Between you and the door?

7 MR. TOPOLSKI: Objection. Asked and answered.

8 THE WITNESS: I already said, five to seven.

9 Q BY MR. CANTORE: When Ed came out?

10 A No, five to seven when I got in line.

11 Q Okay.

12 A When Ed came out of that, it was probably, obviously less,
13 maybe there was a couple, two or three in front of me.

14 Q And how many behind you?

15 A I don't know. It was probably like 12 behind me. Three
16 in front and twelve behind, that's fifteen.

17 Q Okay.

18 A More or less.

19 Q And the ones who booed him, they were behind you?

20 A Yes.

21 Q And the ones in front of you, none of the ones in front of
22 you booed him?

23 A No. It was -- No.

24 Q And what did Ed do when he got booed?

25 A Kind of smiled. You can tell -- I know Ed for a long

1 time. He was kind of --

2 Q Kind of smiled?

3 A -- embarrassed. Yeah.

4 Q Okay.

5 MR. CANTORE: Nothing further.

6 MR. TOPOLSKI: I'm good. Thank you.

7 HEARING OFFICER MYERS: Regional Director? Okay. You're
8 excused. Thank you for your testimony.

9 Do you have any further witnesses?

10 MR. TOPOLSKI: I have no further witnesses. We're
11 finished. Thank you.

12 HEARING OFFICER MYERS: Okay. Let's go off the record,
13 please, for a moment.

14 (Off the record at 11:36 a.m.)

15 HEARING OFFICER MYERS: Okay. We are resuming after
16 lunch. Before the union calls its first witness, we have a few
17 housekeeping matters to go over. First, employer counsel,
18 you're introducing Exhibit 3 and Exhibit 5?

19 MR. TOPOLSKI: Correct. I just want to make sure, let's
20 reiterate. I have Employer's Exhibit 1 through 8, and I would
21 just like to make sure that each of those is introduced today.

22 MR. CANTORE: Why don't you offer all eight in? I will
23 not object to all eight, and so whether we've forgotten any,
24 they're all in.

25 MR. TOPOLSKI: Exactly. There we go.

1 HEARING OFFICER MYERS: Good. Employer Exhibits 1 through
2 8 are received.

3 **(Employer Exhibit Number 1 through 8 Received into Evidence)**

4 MR. TOPOLSKI: Great.

5 HEARING OFFICER MYERS: And then for the Regional
6 Director?

7 MR. RIMBACH: I would like to offer as Joint Exhibit
8 Number 1 the transcript in case number 21-RC-133636, dated
9 August 12, 2014.

10 HEARING OFFICER MYERS: Any objection?

11 MR. CANTORE: Well, they're Joint exhibits. We're all
12 offering it, nobody is objecting to it, so it's received.

13 HEARING OFFICER MYERS: Joint Exhibit 1 is received.

14 **(Joint Exhibit Number 1 Received into Evidence)**

15 HEARING OFFICER MYERS: And then counsel for the Employer,
16 I know you had a clarification to make.

17 MR. TOPOLSKI: Yeah. This morning I think I misspoke our
18 position on the challenges. I just want to make that clear.
19 Ms. Teuscher was on the excelsior list. She's always been a
20 plant clerical, not an office clerical. All right? And what I
21 meant to say was that if the Region determines, all right, that
22 Ms. Teuscher is an office clerical, then the other two, by
23 definition, should also be determined to be office clericals as
24 well. That's really the employer's position. That's what I
25 meant to say this morning. I don't think I think said that.

1 HEARING OFFICER MYERS: Okay.

2 MR. TOPOLSKI: So that's where we are. And I think that
3 clarifies Mr. Cantore's comment earlier this morning.

4 MR. DEFT: Okay. So having said that, I think we're ready.
5 I'm just trying to delay your flight.

6 HEARING OFFICER MYERS: Petitioner, would you please call
7 your first witness.

8 MR. CANTORE: Take the stand, Josh.

9 HEARING OFFICER MYERS: Please raise your right hand.
10 Whereupon,

11 **JOSH ENNULAT**

12 having been duly sworn, was called as a witness herein and was
13 examined and testified as follows:

14 HEARING OFFICER MYERS: Please say and spell your name for
15 the record.

16 THE WITNESS: Josh Ennulat, E-N-N-U-L-A-T.

17 HEARING OFFICER MYERS: You may proceed with questioning.

18 **DIRECT EXAMINATION**

19 Q BY MR. CANTORE: Josh, you work at Cargill correct?

20 A Yes, sir.

21 Q How long have you been there?

22 A A little over four years.

23 Q What is your current job position?

24 A I'm in charge of facilitating CalOils.

25 Q What is your job title; do you know?

- 1 A No.
- 2 Q What does it say on your paycheck?
- 3 A Production labor.
- 4 Q Production labor?
- 5 A Uh-huh.
- 6 Q Now, what is your normal start time?
- 7 A Normal, 5:00 a.m.
- 8 Q And normally end?
- 9 A Normally ends about 2:00, 1:30, 2:00.
- 10 Q What do you do when you first come into work?
- 11 A First thing I do is turn on my computer, and then from
- 12 there I create STOs for CalOils.
- 13 Q What's an STO?
- 14 A STO is a purchase order. It's the first step in the
- 15 process of shipping the product out. So once I get that I
- 16 enter it into our TM system, which will then give me a --
- 17 Q TM means?
- 18 A Because we have the computer system that everybody has
- 19 been talking about, we have WM6, we have TM and SAP that I use
- 20 to facility the CalOils.
- 21 Q Is that two or three systems?
- 22 A That's three.
- 23 Q And you use all three?
- 24 A Yes.
- 25 Q Does Donna use all three?

1 A Not too sure if she uses TM.

2 Q What is TM?

3 A TM is the system where we put in our STO number. The STO
4 number is -- it's basically the number that is going to be
5 billed, that they use to bill.

6 Q Pretty important number then, huh?

7 A Yes. We can't get a delivery number without going into TM
8 and entering the STO number.

9 Q What else do you do?

10 A From there I get the delivery number, I put it into WM6.
11 I dock the truck. I then go out and I load the truck. I come
12 back into the computer and I proceed to ship it in the system.

13 Q Okay. Why do you load the truck?

14 A Well, the loaders don't want to load it, because I was a
15 loader before I took this position, they don't see why I
16 shouldn't be loading the CalOils, especially if I spend 85
17 percent of my time at the desk. They feel like I should be
18 loading those trucks. The other reason I load the truck is
19 CalOils is very particular about their product, so to ensure
20 that it's done properly I do it myself.

21 Q Now, do you spend 85 percent of your time at the desk?

22 A This past week and last week I would say so.

23 Q And before that?

24 A Before that, no. I would say I would have about three or
25 five loads a week. So I would say a majority of my time was on

1 the floor.

2 Q A majority of your time on the floor?

3 A Yeah.

4 Q Until about three weeks ago?

5 A Yes, sir.

6 Q So when you voted, which was back in December, was the
7 majority of your time on the floor?

8 A I would say it was 60 percent at the desk and 40 percent
9 on the floor.

10 Q That's not a majority on the floor.

11 A No.

12 Q It's still a majority at the desk. That's why I'm trying
13 to clarify it. I think you was saying majority on the floor.

14 A Well, the job is mostly, I would say, desk work. But to
15 get the job done, you need a forklift.

16 Q Now, the computers you operate, where are they located?

17 A I don't understand your question.

18 Q How many different computers do you use?

19 A I could do my full and complete job from the forklift.

20 Q That has a computer on it?

21 A Yes, sir.

22 Q Do you ever do your job from the forklift?

23 A Yes, sir.

24 Q Now, in addition to loading, is there any other reason
25 would you be out on the floor?

1 A Cycle count, inventory. I work with Leo, sometimes I help
2 him out with his inventory, Leonardo Garcia.

3 Q And when you're out on the floor other than loading, who
4 are you working with? Who do you interchange with?

5 A Not working with anybody. It's a one-person job. But
6 interacting with, I interact with the loaders.

7 Q How often does Donna get out of the office?

8 A Never. The only time she goes out of the office is to the
9 break room or to the coffee room.

10 Q Now, if a loader has a problem with some kind of an order,
11 who would the loader go to?

12 A They would either go -- well, first they would go to the
13 shipping clerk. Shipping clerk isn't -- I don't know how you
14 would you say it -- I guess qualified to perform some of the
15 tasks or hasn't been trained to do it. So then he would either
16 go to myself, Ray Ramirez or Leo Garcia.

17 Q Why not to Donna?

18 A She doesn't have access to fix things like reservation
19 codes, IDOT failures, anything like that. She can fix delivery
20 numbers, stuff that's done in the system.

21 Q Now, on the day of the vote, were you on line? Did you
22 have to wait on line to vote?

23 A Yes, sir.

24 Q Was there anybody else on line when you voted?

25 A Yes, sir.

1 Q Was on Jaime on line when you voted?

2 A Yes, sir.

3 Q Did you hear loud noises?

4 A Oh, yes, sir.

5 Q What was happening outside?

6 A Well, from the door -- I guess from the door where
7 everybody was standing to where the dock area opens up is about
8 25 feet; that was completely full. I was up in the front with,
9 you know, I'd say about ten guys up front. We were talking and
10 we were actually -- the only conversation going on was the fact
11 that the labor woman was cute, and that's what we were talking
12 about.

13 Q So you weren't talking about who you were going to vote
14 for or not vote for in the election?

15 A No, that never came up.

16 Q Okay. Did you hear anybody else talking behind you about
17 that?

18 A No.

19 Q How about any (Spanish spoken)?

20 A I don't even know what that means, but no.

21 Q Okay. Did you hear any booing?

22 A No. It was really more a bunch of guys stuck in a
23 warehouse talking about things that guys talk about.

24 Q And probably shouldn't be repeated in this hearing room?

25 A Pretty much.

1 Q Do you have much contact with the other people loading
2 trucks? I've forgotten what -- shippers?

3 A Uh-huh.

4 Q Why would you have interaction with them?

5 A Because I check in and check out trucks when the shipping
6 clerk is not there. Matter of fact, in the morning that's a
7 lot of what I do to help out Ray.

8 Q Donna doesn't check the trucks in and out?

9 A Donna doesn't come in until 7:00. She doesn't come into
10 until 7:00 and she doesn't know how. She doesn't have access
11 to ship out trucks or dock them.

12 Q So you deal with the loaders, you deal with Ray. Ray is
13 the lead, correct?

14 A Yes.

15 Q He voted in the election, correct?

16 A Yes, sir.

17 Q And you have -- who else do you have contact with on a
18 regular basis at the job?

19 A Darren Meade I to go. He either comes to me or I go to
20 him with most of the stuff.

21 Q What time does Darren get in the office?

22 A Around 6:00.

23 Q So after you?

24 A Yes.

25 Q Has Darren ever given you loading and unloading work

1 assignments?

2 A Yes, he has.

3 Q What type of loads?

4 A About a month and a half, two months ago he wanted me to
5 have some pallets moved over to Biagi make some room. I came
6 in early and loaded those onto the truck. There's three loads
7 total.

8 Q When was the last time you did a load?

9 A Yesterday.

10 Q Was that CalOils?

11 A Yes, sir.

12 Q Before that?

13 A Tuesday.

14 Q Yesterday was Wednesday. So Tuesday, Wednesday of this
15 week you did loads?

16 A Yes, sir.

17 Q Were any other loaders out there when you were loading?

18 A Yes, sir, yesterday's load, yes, there was. Tuesday's
19 load was done at 5:00 a.m., so no, there wasn't. Loaders don't
20 come in until 5:30.

21 MR. CANTORE: I have no further questions.

22 HEARING OFFICER MYERS: Any cross-examination?

23 MR. TOPOLSKI: Yes, just a couple minutes.

24 HEARING OFFICER MYERS: Okay. Off the record.

25 (Off the record at 1:18 p.m.)

1 CROSS-EXAMINATION

2 Q BY MR. TOPOLSKI: Which do you prefer?

3 A Whatever you prefer, sir.

4 Q How about Josh, so I don't butcher your last name. With a
5 name like Topolski, I'm very sensitive to that. My name is
6 Doug Topolski, I'm an attorney for Cargill and I want to ask
7 you a couple questions about your testimony. You indicate you
8 start at 5:00 a.m., correct?

9 A Yes, sir.

10 Q And that's an accommodation made to you to help you take
11 care of your family situation, isn't it?

12 A No, sir.

13 Q It's not?

14 A No, sir.

15 Q Who else starts at 5:00 a.m., in that office where you
16 work?

17 A Ray Ramirez.

18 Q He starts at 5:00 a.m.?

19 A Yes, sir. I think what you're talking about the
20 accommodation was 7:30 a.m.

21 Q They let you come later some days?

22 A When I was a shipping reliever.

23 Q And you don't do that anymore?

24 A No.

25 Q How long does it take you to load a CalOils truck?

1 A If it's not pre-staged, about 45 minutes.

2 Q Okay. And, what, three to five loads a week go out for
3 CalOils?

4 A Yes, sir.

5 Q How many hours a week do you work?

6 A Forty.

7 Q So that's three to five hours at hours a week out of a 40-
8 hour work week you claim you load trucks, right?

9 A Yes, sir.

10 Q Other than load trucks, you don't need a forklift to do
11 your job, do you?

12 A Yes, I do, sir.

13 Q What else do you need a forklift for?

14 A I have to --

15 MR. CANTORE: Were you supposed to put that on vibrate.

16 MR. TOPOLSKI: I did.

17 MR. CANTORE: Federal courts fine lawyers 200 bucks.

18 MR. TOPOLSKI: I did. It's on mute. I don't know how
19 that happened. This phone does stuff like that. It pocket
20 calls me. Derrick and the Dominos. In any event, I'm sorry.
21 Where were we? Can you read back the last question?

22 (Reporter reads back question)

23 Q BY MR. TOPOLSKI: What else do you need the forklift for?

24 A Combine pallets, break down pallets that are damaged,
25 stained, move pallets to oil hold, unload trucks.

1 Q And you don't do that every day though, do you?

2 A Not every day.

3 Q And let me ask you this question: You heard Mr. Meade
4 testify earlier that he wants the loaders to load the CalOils
5 trucks, correct?

6 A Yes, sir.

7 Q Are you saying that he never told you that?

8 A No, sir.

9 Q So he did tell you that?

10 A No, I never heard him tell me that. Actually, when I took
11 over the position, Leonardo Garcia stated that Darren wanted me
12 to do it and load the trucks. That was back in August.

13 Q So when Mr. Meade testified earlier that he instructed the
14 loaders to load the CalOils trucks and he didn't want you to do
15 that, this is the first time you heard that was today?

16 A I can't attest to what he told the other loaders. I know
17 that I was never told that.

18 Q Let me refer you to Employer's Exhibit 8. Do you see
19 that?

20 A Yes, sir.

21 Q That's the hallway where people were lined up to vote,
22 correct?

23 A Yes, sir.

24 Q And they were also lined up to vote -- you see that window
25 is against that wall too, correct?

- 1 A Yes, sir.
- 2 Q Now, you came into the voting area before the polls
3 opened, correct?
- 4 A I sure did.
- 5 Q Right. And then the Board agents who were running the
6 election said to you that polls aren't opened yet, come back
7 when they're opened, right?
- 8 A Yes.
- 9 Q And then you went to go stand in line, correct?
- 10 A No, I went back to my desk.
- 11 Q But eventually you came to stand in line here?
- 12 A Yes, sir.
- 13 Q Right?
- 14 A Yes, sir.
- 15 Q Okay. Now, when you were standing in line those blinds
16 were closed, right?
- 17 A Yes, sir.
- 18 Q Okay. So how could the other people in line comment about
19 what any of the Board agents looked like, when you couldn't see
20 in the room while you were all waiting in line?
- 21 A What do you mean? I said she was hot. I said she was
22 cute.
- 23 Q And you said the other guys were talking about stuff guys
24 talk about. Is they couldn't see her, how could they talk
25 about it?

1 A They don't have to see her. They take my word for she
2 being hot. Then they come out and they started talking about
3 it after they voted.

4 Q I thought you said this happened before the vote took
5 place.

6 A Yeah, when I first walked in I saw her, then I got in line
7 and I told the other guys, wow, that girl is really hot. Then
8 the guys went in and voted, came out, we talked about it.

9 Q But the noise happened before the guys went hen in to
10 vote, didn't they -- didn't it?

11 A I'm sorry, sir, you're in a warehouse that's running
12 machinery, it's noisy, yes, there was noise.

13 Q Again, now, wait a minute. Are you telling me now the
14 noise is from the machines or the noise is from the people in
15 line? Which is it?

16 A I'm sure if the people are talking in line, they're going
17 to be loud because the machines are loud.

18 Q Well, which machines are over there that are loud enough
19 to be heard by where you were standing in line prior to the
20 vote?

21 A What do you mean?

22 Q There's no machines over there. The packaging department
23 is over on the other side of the building, isn't it?

24 A Have you ever stood there?

25 Q I was there yesterday, yes.

- 1 A It's not loud?
- 2 Q No.
- 3 A It's quiet?
- 4 Q Yes, it was.
- 5 A I would guess to say you weren't there, because the
- 6 voltation room is right nearby and it's pretty loud. Packaging
- 7 doors are always open and it's pretty loud. The palletizer is
- 8 pretty loud -- is loud. And when you have a group of, I don't
- 9 know, maybe 25 people standing in a 25-foot area, they're going
- 10 to be loud.
- 11 Q Where is the closest piece of loud machinery to where you
- 12 are standing?
- 13 A The palletizer.
- 14 Q Where that is? How far away is it?
- 15 A I'd say about 500 feet.
- 16 Q You don't know for a fact which pieces of SAP Ms. Teuscher
- 17 has access, do you?
- 18 A No, sir. I know what she doesn't have access to.
- 19 Q How do you know that?
- 20 A Because she can't perform it on the job.
- 21 Q That doesn't mean that she doesn't have access to it, does
- 22 it?
- 23 A She has told me
- 24 Q Doesn't mean she's going to be trained, right?
- 25 A Huh?

1 Q Means she needs to be trained, doesn't mean she didn't
2 have access to it.

3 A No, she has told loaders you need to go see Ray or myself
4 because I cannot do that.

5 Q So she does have communication with loaders then, doesn't
6 she?

7 A Yeah, she works in the office.

8 MR. TOPOLSKI: We're finished.

9 HEARING OFFICER MYERS: Redirect?

10 **REDIRECT EXAMINATION**

11 Q BY MR. CANTORE: Who has more communication with loaders,
12 you or Donna?

13 A Myself.

14 Q Would you say you have twice as much, three times as much?

15 A As far as the job pertains?

16 Q Yeah.

17 A I would say a little bit more. I want to say twice as
18 much. She doesn't really do anything with the loads.

19 Q In terms of normal socializing as opposed to job --

20 A That's 50/50. We're in the same room. We talk, talk
21 about our kids and stuff like that.

22 MR. CANTORE: Very good. I have nothing more.

23 MR. RIMBACH: I don't have any questions.

24 MR. TOPOLSKI: No questions.

25 HEARING OFFICER MYERS: You are excused. Thank you for

1 your testimony.

2 THE WITNESS: Thank you.

3 HEARING OFFICER MYERS: Are you ready to call your next
4 witness?

5 MR. CANTORE: Leonardo.

6 Whereupon,

7 **LEONARDO GARCIA**

8 having been first duly sworn, was called as a witness herein
9 and was examined and testified as follows:

10 HEARING OFFICER MYERS: Please say and spell your name for
11 the record.

12 THE WITNESS: Leonardo Garcia, L-E-O-N-A-R-D-O G-A-R-C-I-
13 A.

14 **DIRECT EXAMINATION**

15 Q BY MR. CANTORE: Mr. Garcia, you're employed at Cargill?

16 A Yes, sir.

17 Q And what's your job there?

18 A It's inventory controller/product controller/shipping to
19 what's on there.

20 Q Is that what it says on your paycheck?

21 A Yeah, it has it on my profile on the Cargill web page on
22 the profile.

23 Q And how long have you been at Cargill?

24 A They hired me August of 2011, and then before that I was a
25 year with the agency.

1 Q You were a temp?

2 A I was on the line, yes, sir.

3 Q How long have you had this long title of yours?

4 A Took over in August of 2013. I took over for Ray Ramirez.
5 He went over to SAP training, so they proposed to me if I could
6 take over the shipping lead while he was gone. So I took over
7 the shipping lead from August of 2013 to August of 2014, when
8 he came back. And after that I was doing both my job and the
9 CalOils job.

10 Q And the what job?

11 A And the CalOils job. So I was doing both my job,
12 inventory controller, and then the CalOils job. I was doing
13 both of them. And I was -- after Ray came back, I was in the
14 shipping office, you know, because I was there during Go Life.
15 So I was the one that was helping all the loaders and
16 everything, so I stayed there because I had more knowledge at
17 that time to help them out.

18 And then once Ray came back, he got established, you know,
19 then later on around November or October Darren stepped in and
20 told me that I was getting -- that Josh was going to be taking
21 over the CalOils, so if I could train him. And by doing so he
22 was going to sit in my cubicle and they were going to switch me
23 to the front office until the production office was done,
24 because it was like a conference room before, so the cubicles
25 are new. So once they did the new one, I moved over there.

1 Q Let me see if I can translate what you just said. You
2 started off in Employer's Exhibit 2. Do you have Employer's
3 Exhibit 2 there?

4 A Yes, yeah.

5 Q You started off in one of the four chairs there?

6 A Yes, sir.

7 Q Which one?

8 A Four.

9 Q Four. Eventually, you got moved to the sales office?

10 A Yes, sir.

11 Q And then across the way in what is now Employer's Exhibit
12 5?

13 A Yes, sir.

14 Q Okay. Which desk is yours?

15 A Number 4.

16 Q So you went from four to four. What is your -- when did
17 you go to that? When did you go to Exhibit 5, Employer Exhibit
18 5?

19 A It was November or December. I can't recall when that
20 was.

21 Q Before or after the vote?

22 A Before.

23 Q Before the vote. How much time -- what time do you show
24 up for work in the morning?

25 A 5:00, 5:30. And then during month end I go in at midnight

1 to make sure everything is done.

2 Q When do you go in at midnight?

3 A During our month end process, once a month. So I go in
4 whatever time they need me to go in. Just two weeks ago I
5 started at 4:00 to offload some drop trailers that we had
6 there.

7 Q You went in to offload drop trailers?

8 A Yeah. Josh was on vacation, so I was covering for him.

9 Q And how did you do that?

10 A Forklift. I'm forklift certified.

11 Q How often do you work with a forklift.

12 A I don't usually work on a forklift. So that day I was
13 covering for Josh, and I had to send them an email that the
14 trailers needed to be emptied, but I came back and they were
15 still not empty. And so then they needed to be picked up, so I
16 told my supervisor, which is Stephanie, "Can I come in after at
17 4:00 and I'll offload them?" Because they were shorthand. And
18 she said yes. And so I was offloading them and the warehouse
19 guys know that I will get on the forklift if I need to. I will
20 get on the forklift. If asked to I'll get on it and help the
21 guys. I mean I have no problem with it.

22 And then the last time was about, I can't say, three or
23 four months ago. We had some visitors over and we had a bunch
24 of stain damage and Darren and Stephanie came up to me, asked
25 me if I could get some drop trailers so we could store the

1 damaged product in there. So they brought them in, and me and
2 Albert loaded them on a Saturday. And that was the last time.
3 Other than that, you know, I spend most of my time helping the
4 forklift drivers if they have issues.

5 Q How much time do you spend in the office at your desk at
6 chair number four?

7 A Each day is different. So, I mean, given that I could
8 spend 60 to 70 percent of it. On the other day I could be out
9 there helping the guys, like, if they have trouble with
10 inventory, like a pallet that's wrong. They will come to me
11 and say, "Hey, you know, can you do check this pallet out?"
12 The forklift driver. And I'll be okay. And I'll go there and
13 check it out and see what the issue is with the pallet. You
14 know, if they have questions like, hey, how can I do this or
15 how can I do that? Then I help them out, the put-away drivers.
16 During month end on the night, you know, I spend the day in the
17 office closing out all the orders.

18 Q How much time do you spend out on the factory -- the plant
19 floor?

20 A I'd say about 40 to 30 percent.

21 Q During that time out on the floor, you're talking to
22 people who -- are you talking to Darren the whole time or are
23 you talking to loaders and put-away people?

24 A I report straight to Stephanie. She's my direct
25 supervisor. I report to her. When I'm out there, I'm talking

1 to the forklift drivers to make sure that, you know, they're
2 doing what -- that they know what they're doing. How are you
3 doing? Do you have any questions? You know. You need help in
4 learning something? Can I help you? This pallet. We have
5 this process that when they over scan a pallet they put a paper
6 for me there right next to the palletizer, and I go every day
7 and I pick them up. So then I see this pallet was produced
8 wrong, so I got to go back and erase it from the system.

9 MR. CANTORE: I have nothing further.

10 MR. TOPOLSKI: Couple of minutes.

11 HEARING OFFICER MYERS: Off the record.

12 (Off the record at 1:34 p.m.)

13 HEARING OFFICER MYERS: Any cross-examination for this
14 witness?

15 MR. TOPOLSKI: None for me, thank you.

16 HEARING OFFICER MYERS: For the Regional Director?

17 MR. RIMBACH: No questions.

18 HEARING OFFICER MYERS: Thank you, you are excused. Oh, I
19 actually have a question. You said your supervisor is
20 Stephanie. What is her last name?

21 THE WITNESS: Puig.

22 HEARING OFFICER MYERS: What is her job title?

23 THE WITNESS: She's the packaging and shipping supervisor.

24 HEARING OFFICER MYERS: Do you know who else she
25 supervises?

1 THE WITNESS: She supervises everyone in the packaging and
2 shipping.

3 HEARING OFFICER MYERS: No further questions. Thank you,
4 you are excused. Thank you for your testimony. Do you have
5 another witness?

6 MR. CANTORE: Yup. He's taking the stand right now.
7 Israel.

8 HEARING OFFICER MYERS: Please raise your right hand.
9 Whereupon,

10 **ISRAEL RAMIREZ,**
11 having been first duly sworn, was called as a witness herein
12 and was examined and testified as follows:

13 HEARING OFFICER MYERS: Please have a seat. Please say
14 and spell your name for the record.

15 THE WITNESS: Israel Ramirez, I-S-R-A-E-L R-A-M-I-R-E-Z.

16 HEARING OFFICER MYERS: Proceed with questioning.

17 **DIRECT EXAMINATION**

18 Q BY MR. CANTORE: Mr. Ramirez, are you employed at Cargill?

19 A Yes.

20 Q What do you do?

21 A I'm a machine operator.

22 Q On the date of the election, did you have any tasks to
23 perform that day?

24 A To be the observer.

25 Q So you were in the room with Donna when she was observing?

1 A Yes.

2 Q And Donna was the company observer and you were the union
3 observer?

4 A Correct.

5 Q During the time you were in the -- acting as an observer,
6 did you see anyone in the give a thumbs up signal?

7 A I did not.

8 Q Okay. Now, Donna -- you were in here when Donna
9 testified. Did you hear the noise outside the door?

10 A I did.

11 Q Was it noisy out there?

12 A It was loud.

13 Q Could you -- do you speak Spanish?

14 A Yes.

15 Q Could you understand anything that was being said outside?

16 A No, it was just loud noise.

17 Q So you could hear that people were talking, but you could
18 not make out what they were saying?

19 A No, I couldn't.

20 Q Did you see Donna ask -- tell the Board agent anything
21 during the whole time during the election?

22 A I do not recall.

23 Q Did you hear anybody get booed?

24 A No.

25 MR. CANTORE: I have nothing further.

1 HEARING OFFICER MYERS: Any cross-examination?

2 MR. TOPOLSKI: Give us a minute.

3 HEARING OFFICER MYERS: Off the record, please.

4 (Off the record at 1:40 p.m.)

5 HEARING OFFICER MYERS: Any cross-examination?

6 MR. TOPOLSKI: None.

7 HEARING OFFICER MYERS: Any for the Regional?

8 MR. RIMBACH: No questions.

9 HEARING OFFICER MYERS: You are excused. Thank you for
10 your testimony. Let's go off the record for a five-minute
11 break.

12 (Off the record at 1:41 p.m.)

13 HEARING OFFICER MYERS: Okay. Please call your next
14 witness. Please raise your right hand.

15 Whereupon,

16 **GILBERT DAVILA**

17 having been duly sworn, was called as a witness herein and was
18 examined and testified as follows:

19 HEARING OFFICER MYERS: Thank you. Please sit down and
20 state and spell your name.

21 THE WITNESS: Gilbert, G-I-L-B-E-R-T Davila, D-A-V-I-L-A.

22 **DIRECT EXAMINATION**

23 Q BY MR. CANTORE: Gilbert, by whom are you employed?

24 A UFCW Local 324.

25 Q And how long have you been employed by them?

- 1 A Fifteen, 16 years.
- 2 Q Since when? What year?
- 3 A 1997.
- 4 Q And what is your current position with the Local 324?
- 5 A Organizing director.
- 6 Q And back in 2003, what was your position?
- 7 A Organizer.
- 8 Q Okay. Do you know -- are you familiar with the other UFCW
- 9 Locals in Southern California?
- 10 A Yes.
- 11 Q Do you know what UFCW represents the workers in -- now
- 12 I've lost that piece of paper. Oh, here we go. In West
- 13 Covina?
- 14 A Which -- I'm sorry. Which question?
- 15 Q What UFCW Local represents workers in West Covina?
- 16 A Local 1428.
- 17 Q Okay. In 200, 2003, were you employed by Local 1428 in
- 18 any way?
- 19 A No.
- 20 Q Do you know Mr. Smith?
- 21 A Not before the 9th of Octo -- November. November. I
- 22 didn't know him.
- 23 Q And on November 9th, is that when you paid a visit to his
- 24 house?
- 25 A Yes, sir.

1 Q Okay. Is Mr. Smith the only person whose house you
2 visited?

3 A No, sir.

4 Q In the first visit to Mr. Smith's house, what did you say
5 to Mr. -- and I don't want everything. How long was your
6 visit?

7 A Probably about 30 minutes.

8 Q And what was the basis tenor of your visit that day?

9 A We talk about the -- we educate workers what the Union --
10 about the Union and we inoculate workers about what the --
11 about the employer's campaign.

12 Q You tell -- predict what the Employer is going to do?

13 A Yes.

14 Q Okay. Did you say anything differently to Mr. Smith in
15 your first meeting with him than you said to most of the other
16 workers?

17 A No, sir.

18 Q And the end of that first meeting, did you tell Mr. Smith,
19 "So long. I'll never see you again." Or did you say something
20 else?

21 A No, I told him that I will see him in about two weeks one
22 other time, because the Employer is going to talk about the
23 strikes, or the next phase is going to be the strikes, "So I'll
24 probably come back to visit you." And he said okay.

25 Q And did you say that to all the workers you visited?

1 A Yes.

2 Q Okay. And was that the standard routine for all the
3 organizers that you direct?

4 A Yes.

5 Q Okay. Now, you didn't visit everybody in the bargaining
6 unit, correct?

7 A No.

8 Q You had other organizers doing that.

9 A Yes.

10 Q Okay. Now, did you go back to visit Mr. Smith a second
11 time?

12 A Yes.

13 Q Do you recall when that was?

14 A Yes. It was again on -- both times on Sundays and the
15 last one was around the 23rd. It was right before the
16 election.

17 Q Okay. What did you discuss this time?

18 A When I knocked on the door, he came out. We shook hands.

19 "How are things going?" Did a little small talk. "How's
20 work?" And then I said, "So I heard what the Employer said
21 about the -- about strikes. I heard what you said about
22 strikes. What happened?" And he told me.

23 Q Okay. And what did you say after that?

24 A I said, "I understand. Now, you're not quite -- we don't
25 quite understand what -- about the strikes and about lockouts.

1 And so I won't be back again, because the election's next week.
2 And I hope that we continue to have your support. Hope you
3 support your coworkers. And if you have any questions, please
4 call me."

5 Q Now, you said -- you just said, "I hope we continue to
6 have our (sic) support."

7 A Yes.

8 Q When you left him the first time --

9 A Yes.

10 Q -- as an experienced organizer, did you count him as a yes
11 vote or a no vote?

12 A Oh, he told me he was going to vote yes.

13 Q And when you left him the second time, did you count him
14 as a yes vote or a no vote?

15 A A walked away most likely saying he was going to vote no.

16 Q Okay. Now, did you say there were good -- when you left,
17 I want you to repeat again exactly what you said when you left.

18 A Uh-huh.

19 Q "I won't be back." Can you do -- tell me again.

20 A Yeah. I told him. I said, "I understand where you stand
21 with the strikes and lockouts. You quite don't understand.
22 But I'm not going to see you again, because the election's next
23 week. So if you please have any que" -- I mean, "If you have
24 any questions, call me, but I hope we still have your support
25 and support your coworkers."

1 Q Okay. Now, in what you just said, I did not hear, "I will
2 be back, if." Did you say that at all?

3 A No.

4 Q Okay.

5 MR. CANTORE: I have no further questions.

6 HEARING OFFICER MYERS: Okay. Cross.

7 **CROSS-EXAMINATION**

8 Q BY MR. TOPOLSKI: I also did not hear you say that Mr.
9 Smith was a liar. Did you say that to him at the second
10 meeting?

11 A No.

12 Q Then why did your lawyer sit here and badger him earlier
13 this morning by trying to prove that he was lying about what he
14 said at the meeting?

15 A I don't know why.

16 Q You never told your lawyer that Mr. Smith Lied when he
17 stood up and spoke at one of the Employer information meetings.

18 A Did I -- I'm sorry --

19 MR. CANTORE: Objection. First of all --

20 THE WITNESS: Ask a question --

21 MR. CANTORE: -- it's attorney client privilege as to what
22 he told his lawyer. And where I got my information from, I thi
23 -- that's attorney client privilege. I object to the question.
24 I instruct the witness not to answer.

25 HEARING OFFICER MYERS: Objection sustained on the

1 basis --

2 MR. TOPOLSKI: I'll rephrase the question.

3 HEARING OFFICER MYERS: -- of attorney client privilege.

4 MR. TOPOLSKI: All right.

5 Q BY MR. TOPOLSKI: Did you at any time accuse Mr. Smith of
6 lying with respect to any statement he made at an employee
7 information meeting?

8 A No.

9 Q Did you hear from anyone anything Mr. Smith said at any of
10 the Employer's information meetings?

11 A Repeat the question.

12 Q Did anybody ever tell you that Mr. Smith got up at an
13 Employer information meeting and spoke out against the Union?

14 A Yes, I did hear that.

15 Q Okay. But you don't know what Mr. Smith said. You only
16 know what somebody told you he said, right?

17 A I wasn't at the meeting.

18 Q Okay. Now, there are various -- you call -- when you go
19 to somebody's house, you call it a home call, right?

20 A Yes, sir.

21 Q Okay. And there are various reasons you have home calls
22 as an organizer, correct?

23 A Various reasons?

24 Q Yes.

25 A Just one reason.

1 Q Well, you just told me that you had two reasons.

2 A One reason. And the whole home call, the reason why we go
3 and visit worker is to assess workers, to educate workers and
4 to inoculate workers.

5 Q Well, there's three reasons right there, right?

6 A Well, it's one -- but it's one home call.

7 Q Right. But there's three reasons. You do that one, to
8 convey information about what you think you can do for --

9 A Okay.

10 Q -- worker, right?

11 A Sure.

12 Q Two, you try to, for lack of a better word, warn them
13 about what the Employer's going to tell them, right?

14 A Inoculate them, yes.

15 Q All right. Right. And three, you want to find out how
16 they're going to vote, don't you?

17 A No. We just educate them about the worker. And if they
18 tell us, then we reassess them.

19 Q Mr. Davila, you're not going to sit here and tell me that
20 you go to people's houses and you're not trying to figure out
21 how they're going to vote, are you?

22 A They tell us how they're going to vote.

23 Q That doesn't answer my question. You're not going to sit
24 here this afternoon and tell me that when you go to somebody's
25 house, you're not trying to figure out how they're going to

1 vote.

2 A No. I'm not telling you that.

3 Q Okay. So there are essentially three reasons, right?

4 Now, if somebody -- if somebody says they're not going to vote
5 for the Union, all right? I mean, you're probably not going to
6 go back to see them, right?

7 A No, not necessarily. But if they tell me directly, they
8 tell the other organizers, "Don't come to my house," we're not
9 going to go and visit them. We -- they don't want us to visit
10 them, so we won't go and visit them.

11 Q Okay. That's all. Thanks.

12 A Okay.

13 HEARING OFFICER MYERS: For the regional director?

14 MR. RIMBACH: No questions.

15 HEARING OFFICER MYERS: Okay. Any redirect?

16 MR. CANTORE: None.

17 HEARING OFFICER MYERS: Okay. The witness is excused.

18 THE WITNESS: Thank you.

19 HEARING OFFICER MYERS: Thank you for your testimony. Do
20 you have any other witnesses?

21 MR. CANTORE: No. I rest.

22 HEARING OFFICER MYERS: Okay. Any rebuttal from the
23 Employer?

24 MR. TOPOLSKI: I just have a couple minutes of rebuttal.
25 I'd like to recall -- well, I'd like to have two minutes with

1 Mr. Meade first.

2 HEARING OFFICER MYERS: Okay. Off the record, please.

3 (Off the record at 1:56 p.m.)

4 HEARING OFFICER MYERS: Employer, you had a rebuttal
5 witness?

6 MR. TOPOLSKI: Yes, I do.

7 HEARING OFFICER MYERS: Okay.

8 MR. TOPOLSKI: We'd like to recall Mr. Meade for just a
9 couple questions.

10 HEARING OFFICER MYERS: Mr. Meade, I'll remind you that
11 you're still under oath.

12 THE WITNESS: Thank you.

13 Whereupon,

14 **DARREN MEADE**

15 having been duly sworn, was called as a witness herein and was
16 examined and testified as follows:

17 **DIRECT EXAMINATION**

18 Q BY MR. TOPOLSKI: Mr. Meade, we've had a lot of testimony
19 about cycle counts. What is a cycle count?

20 A A cycle count is essentially going out onto the floor and
21 physically counting how much of that product is physically
22 there.

23 Q Do you need a forklift to do that job?

24 A No, you do not.

25 Q What do you need?

1 A Basically you need yourself and something to write with.

2 Q Like a finger or a --

3 A You could --

4 Q -- pencil or --

5 A -- use a finger or a pencil, pad of paper.

6 Q Abacus maybe?

7 A You could theoretically do that, yes.

8 Q Okay. You heard testimony about noises outside of the

9 polling area prior to the vote, correct?

10 A Correct.

11 Q All right. How far away is the nearest piece of machinery

12 from that area?

13 A Well, like Josh said, it was 500 feet away, so that's more

14 than a football field's length away.

15 Q Do you need ear protection to --

16 A That is an area you do not need ear protection in.

17 Q Okay. Would those machines be running immediately to the

18 election?

19 A If there was as many people there outside the office, then

20 those machines were probably not running.

21 Q And why is --

22 A And --

23 Q -- that again?

24 A Because there wouldn't be anybody running -- everyone

25 would be at the voting area.

1 Q All right. Now, you heard Mr. Garcia talk about that he
2 did some multitasking for lack of a better word.

3 A Correct.

4 Q Can you explain what that was about?

5 A Yes. For several months, we were short staffed at
6 Fullerton, due to the SAP implementation. And it required
7 numerous people to wear several different hats. And again, we
8 were short staffed, so everyone, including management, wore
9 different hats and was required to do more than their ordinary
10 assigned duties.

11 Q Okay. Are there people, other than production people who
12 are forklift certified in that building?

13 A Yes, there are.

14 Q Like who?

15 A I know for a fact that two engineers are forklift
16 certified.

17 Q And how do you know that?

18 A Because I had them get certified.

19 Q Okay. Did you see them operate forklifts?

20 A Yes, I did.

21 Q When was the last time that happened?

22 A About two weeks ago --

23 Q Okay.

24 A -- when we did a cycle count.

25 Q All right. Or -- well, not really a cycle count. But we

1 were in the facility. I saw them there.

2 Q Okay. All right. How often do you do cycle counts?

3 A Every Sunday I go and cycle count the JIBS, raw material
4 in our warehouse.

5 MR. TOPOLSKI: No further questions. That's it.

6 HEARING OFFICER MYERS: Any --

7 MR. CANTORE: Couple of questions.

8 THE WITNESS: Yep.

9 **CROSS-EXAMINATION**

10 Q BY MR. CANTORE: You said the machines were probably not
11 running during the vote. You don't know for sure, though, do
12 you?

13 A Well, I'm practically pretty sure they were not running,
14 now that I think about it, because again, you need production
15 workers to run those lines. And they were not over there
16 running the machines.

17 Q Suppose the shippers were there. Production had already
18 voted. You don't know really though.

19 A I was not allowed in that area, so I don't know who
20 exactly was there at the time.

21 Q Very good.

22 A But if testimony says that there was 15 people there, I
23 find it very hard to believe that the machines were running.

24 Q Okay. Fifteen people together can make a lot noise,
25 though, can't they?

1 A Correct.

2 Q Okay. Now, you don't need a forklift to do the counting.

3 I don't know what do we call it?

4 MR. TOPOLSKI: Cycle counts.

5 MR. CANTORE: Cycle counts. There we go.

6 Q BY MR. CANTORE: Can it be done on a forklift?

7 A I don't know why you'd want to do it on a forklift.

8 Q Well, does the forklift have a computer on it?

9 A It has a computer on it, yes.

10 Q Could you do the cycle count on the computer?

11 A Not really, no.

12 Q Why not? Doesn't it have an adding machine?

13 A Does it have a what?

14 Q Adding machine on the computer.

15 A Not really. I mean, you don't really add -- you don't use

16 the computer to do the cycle count.

17 Q Okay. What do you use?

18 A I use pencil and paper and that's what everyone uses.

19 Q Not a special form?

20 A Not a special form.

21 Q I mean, what, it's a piece of yellow pad like this? The

22 one I'm writing on right now or is there a special paper you're

23 doing the cycle counts on?

24 A Yeah, you'd use -- you -- well, I don't want to say it's a

25 special form, but it's just a paper with quantities and part

1 numbers on it that you go down the list.

2 Q Okay. And where is this cycle count done?

3 A In the warehouse.

4 Q And who works in the warehouse?

5 A Multitude of different people.

6 Q In addition to the people doing the cycle count, correct?

7 A Come again?

8 Q In addition to whoever's doing the cycle count, there are
9 multiple -- a multitude of people working.

10 A Correct.

11 Q And do you need a computer to double-check the quantity
12 when you do the cycle counts?

13 A Not if you do them correctly.

14 Q And if you want to make sure that you're doing them
15 correctly, if you want to actually do a good job for the
16 company, do you check your work on a computer?

17 A Af -- on the -- you're talking about the for -- computer
18 on the forklift?

19 Q On a computer. I'm not necessarily on the computer on the
20 forklift. I mean on a computer. After you've done all your
21 little numbers on thing you have, pencil and paper, don't you
22 check them on a computer?

23 A We enter in the adjustments on a computer, yes.

24 Q Okay.

25 A That's usually hundred percent of the time in the office

1 at a computer desk.

2 Q And if you're not an office person, like hanging out in
3 the factory, could you do it out in the factory on the
4 forklift?

5 A So you're asking if I --

6 Q If -- fictitious person, John Doe, gets hired to do cycle
7 counts and he hates offices, the confines. He feels
8 claustrophobic in them, could he do them --

9 MR. TOPOLSKI: Objection.

10 Q BY MR. CANTORE: -- on a computer --

11 MR. TOPOLSKI: Objection.

12 Q BY MR. CANTORE: -- on a forklift?

13 MR. TOPOLSKI: Calls for speculation.

14 THE WITNESS: I don't think you --

15 HEARING OFFICER MYERS: What is -- there's an objection.

16 THE WITNESS: Yeah.

17 HEARING OFFICER MYERS: What is the --

18 MR. CANTORE: I withdraw the question. How about that?

19 HEARING OFFICER MYERS: Okay.

20 MR. CANTORE: I have no further questions for this
21 witness.

22 THE WITNESS: Okay.

23 HEARING OFFICER MYERS: Okay.

24 THE WITNESS: All right.

25 MR. TOPOLSKI: Me neither.

1 MR. RIMBACH: No questions.

2 HEARING OFFICER MYERS: Okay. You're excused again.

3 Thank you.

4 THE WITNESS: Thank you.

5 MR. CANTORE: So we got two days for briefs, right?

6 HEARING OFFICER MYERS: The parties do wish to submit
7 briefs, correct?

8 MR. TOPOLSKI: Yes.

9 HEARING OFFICER MYERS: Okay. Briefs will be due in my
10 office by the close of business on March 12th, 2014 -- 2015.
11 Parties are hereby advised that they can make arrangements with
12 the reporting service to have the transcript delivered on an
13 expedited basis. Requests for extensions of time to file
14 briefs, based on delay or non-receipt of the transcript will be
15 denied, if the parties have not availed themselves of this
16 option.

17 Additionally, requests for extensions of time to file
18 briefs will not be granted except under the most unusual
19 circumstances. Any requests for extensions of time in which to
20 file briefs must be made in writing to the hearing officer,
21 specifying the party's reasons for the extension and how much
22 time is requested.

23 Before we close, I want to clarify on the record that the
24 purpose of Joint Exhibit 1 is -- we admitted that into evidence
25 for background facts related to the layout of the plant, the

1 job duties of packaging, shipping and receiving employees and
2 other facts relevant to the determination of the three
3 challenged ballots. Do the parties have anything else?

4 MR. CANTORE: I only have one question.

5 HEARING OFFICER MYERS: Uh-huh.

6 MR. CANTORE: When you say the briefs shall be filed with
7 you. Do we have to mail them to Colorado or do we address them
8 to you here at the Region?

9 HEARING OFFICER MYERS: That's a very good question. Can
10 you e-file them?

11 MR. CANTORE: We probably will be e-filing them, yes --

12 MR. TOPOLSKI: Yes.

13 MR. CANTORE: -- but --

14 MR. TOPOLSKI: Exactly. The question is in Region 21 or
15 in your Region?

16 HEARING OFFICER MYERS: I'm going to say file them in
17 Region 21, because it's still a Region 21 case number.

18 MR. TOPOLSKI: Do you have a card?

19 HEARING OFFICER MYERS: I do have a card.

20 MR. TOPOLSKI: Because what I'll do -- what we'll do is
21 I'll e-file it and then I'll email you a courtesy copy. How's
22 that?

23 HEARING OFFICER MYERS: That would be wonderful.

24 MR. CANTORE: I'll do the same thing.

25 MR. TOPOLSKI: There you go.

1 HEARING OFFICER MYERS: Okay. And I'll be --

2 MR. CANTORE: I'm not going to be outdone by him.

3 HEARING OFFICER MYERS: Well, thank you everybody.

4 MR. TOPOLSKI: But I'm going to do it before Bob does it,
5 so --

6 HEARING OFFICER MYERS: Okay. So if there's nothing
7 further, then the hearing will be closed. Anything further?

8 MR. CANTORE: Nothing further.

9 HEARING OFFICER MYERS: Okay. The hearing is now --

10 MR. CANTORE: Let me make sure I've got your card. I
11 think I stuck it in this envelope --

12 HEARING OFFICER MYERS: I will give it to you in just a
13 minute.

14 MR. CANTORE: -- here.

15 MR. TOPOLSKI: Yeah, I don't have yours.

16 HEARING OFFICER MYERS: Okay. So the hearing is now
17 closed.

18 **(Whereupon, the hearing in the above-entitled matter was closed**
19 **at 2:07 p.m.)**

20

21

22

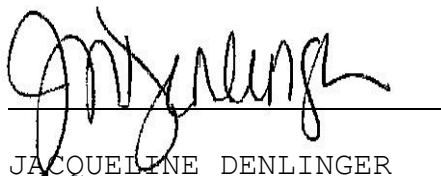
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C E R T I F I C A T I O N

1
2 This is to certify that the attached proceedings before the
3 National Labor Relations Board (NLRB), Region 21, Case Number
4 21-RC-136849, Cargill Inc., and United Food & Commercial
5 Workers Union, Local 324, at National Labor Relations Board,
6 Region 21, 888 South Figueroa Street, Ninth Floor, Los Angeles,
7 California 90017, on Thursday, March 5, 2015, at 9:01 a.m. was
8 held according to the record, and that this is the original,
9 complete, and true and accurate transcript that has been
10 compared to the reporting or recording, accomplished at the
11 hearing, that the exhibit files have been checked for
12 completeness and no exhibits received in evidence or in the
13 rejected exhibit files are missing.

14
15
16 
17 JACQUELINE DENLINGER

18 Official Reporter
19
20
21
22
23
24
25

Exhibit 4

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CARGILL, INC.,)	
)	
Employer,)	
)	
and)	Case No. 21-RC-136849
UNITED FOOD AND COMMERCIAL)	
WORKERS UNION LOCAL NO. 324)	
)	
)	
Petitioner.)	
<hr/>)	

**EMPLOYER'S OBJECTIONS TO CONDUCT
AFFECTING THE RESULTS OF THE ELECTION**

On December 4, 2014, an election was held in the above-referenced matter. On that day, the ballots were counted. The tally included 14 yes votes for the Petitioner United Food and Commercial Workers Union Local No. 324 (hereinafter "Petitioner" or the "Union"), 14 no votes cast for Cargill, Inc. ("Cargill" or "Employer"), 3 challenged ballots and 1 void ballot. Pursuant to Section 102.69 of the National Labor Relations Board's ("the Board") Rules and Regulations, the Employer files these Objections to conduct affecting the results of the election.

OBJECTION NO. 1: The election conducted in this matter is invalid because the petition should have been dismissed with prejudice as the result of the dismissal of Case No. 21-RC-133636. The National Labor Relations Board completely failed to address the Employer's sound arguments seeking dismissal in the Employer's Request for Review, thereby improperly failing to follow NLRB practices and regulations and denying the Employer and affected employees due process.

OBJECTION NO. 2: The Union, by its employees and agents, threatened voting unit employees with harassment and other consequences if they did not cease exercising their Section 7 right to oppose union representation. This illegal conduct took place between the date the petition was filed and the date election was held.

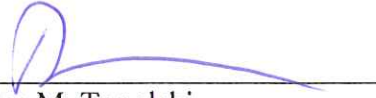
OBJECTION NO. 3: Union supporters engaged in electioneering in the polling area while the polls were open.

OBJECTION NO. 4: Union employees instructed the Union observer to solicit and encourage electioneering in the polling area just before the polls opened on December 4, 2014.

OBJECTION NO. 5: Union supporters engaged in a loud demonstration just outside the polling room while waiting in line to vote and while the polls were open and no effort was made by Board agents conducting the election to investigate or end this disruptive and illegal conduct.

HEARING REQUESTED: The Employer requests a hearing on the genuine issues of material facts raised by these Objections, which will be supported by competent evidence that will be timely submitted to the Regional Director in accordance with the Board's Rules and Regulations. Based on the evidence presented, the Employer requests that the results of the December 4, 2014 election be set aside and that the petition be dismissed with prejudice.

Respectfully submitted,



Douglas M. Topolski

Daniel A. Adlong, Esq.

**Ogletree, Deakins, Nash, Smoak
& Stewart, P.C.**

1909 K Street, N.W., Suite 1000

Washington, DC 20006

(202) 263-0242 Attorneys for Respondent,
Cargill, Inc.

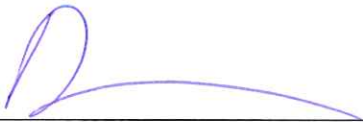
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of December 2014, the foregoing **Employer's Objections to Conduct Affecting the Election** was filed electronically and that service copies were sent via e-mail to:

Robert A. Cantore, Esq.
Gilbert & Sackman
3699 Wilshire Blvd Suite 1200
Los Angeles, CA 90010
rac@gslaw.org

Olivia Garcia, Regional Director
National Labor Relations Board, Region 21
888 S. Figueroa Street, 9th Floor
Los Angeles, California 90017
olivia.garcia@nrlrb.gov

Sylvia Meza, Board Agent
National Labor Relations Board, Region 21
888 S. Figueroa Street, 9th Floor
Los Angeles, California 90017
sylvia.meza@nrlrb.gov



Douglas Topolski